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QUIET TITLE ACTIONS AGAINST THE UNITED STATES

ORIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

COMPLETED

ON

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H.R. 2484

QUIET TITLE ACTIONS AGAINST THE UNITED STATES

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QUIET TITLE ACTIONS AGAINST THE UNITED STATES

WEDNESDAY, MARCH 5, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 1:30 p.m., in room 2237, Rayburn House Office Building, Hon. Dan Glickman (chairman of the subcommittee) presiding.

Present: Representatives Berman, Kindness, and Brown.

Staff Present: William P. Shattuck, counsel; Kevin C. Richardson, associate counsel; and Florence McGrady, legal assistant.

Mr. GLICKMAN. Good afternoon, I would like to welcome our witnesses here today. Today we are holding a hearing on the bill H.R. 2484, introduced by our colleague Howard Berman, and also sponsored by our colleague Hank Brown.

This is a bill which would amend subsection f of section 2409a of title 28, to exempt the States from the 12-year limitation for filing Quiet Title Actions Against the United States. The bill before us today is similar to a bill which was the subject of a hearing 2 years ago. Since that time the committee has received additional appeals for action on the subject, and information which indicates that the current law creates an unfair burden on the States.

Accordingly this hearing will serve to reinforce the information presented at the earlier hearing, and update that information by the additional experience and information developed in the subsequent period. The Quiet Title Act originated as a bill before this subcommittee in 1972. As will be brought out in the testimony today, a Supreme Court decision in 1983, the case of *Block* v. *North Dakota* held that the statute of limitations in section 2409a(f) was fully applicable to the States.

We welcome this opportunity to receive testimony concerning the situation, concerning the adjudication of title when the interests of the Federal Government and the States are involved.

And I would call on the sponsor of the bill, Mr. Berman, if he has any remarks right now?

Mr. BERMAN. I thank you, Mr. Chairman. I don't; except to express my appreciation for your willingness to set this hearing. I am very aware of all the demands on the subcommittee's time; and do appreciate your taking time out, particularly at a time when representatives of the National Association of Attorney Generals could

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share their views on this issue. And I just wanted to let you know that.

Mr. GLICKMAN. Thank you, Mr. Berman.

Mr. Brown, question.

Mr. BROWN. Thank you, Mr. Chairman. I would like to add my thanks to your willingness to bring this bill up. And a special note of thanks to my colleague from California, who has taken the leadership on this issue. The bill simply makes it clear that the 12-year statute of limitations in Federal Quiet Title Act does not apply to suits brought by the States. The legislation is a successor to earlier efforts that has grown out of several organizations, and the supporting groups include the National Governors Association, the National Conference of State Legislators, the National Association of Attorney Generals, the Conference of Western Attorney Generals, the Western Legislative Conference, and the Western States Land Commission Association, as well as some former speakers of the Colorado House, who are very sorry they have to oppose the bill.

Mr. Chairman, this is an important piece of legislation because it helps resolve a problem that must be addressed. And I am confident that with the leadership of the Bureau of Land Management here today, that we can work out an alternative that is fair to all.

Mr. GLICKMAN. Thank you, Mr. Brown.

For the record we have statements by Hon. John Seiberling, of Ohio; Gov. Bruce Babbitt; the attorney general of my State; Robert Stephen, attorney general of Kansas; and the Western States Land Commissioners Association. All of those will be included in the record, plus any other statements that will be submitted. We will hold the record open for 5 days after today's hearing for any additional statements.

I am going to have to leave because I have another meeting. Mr. Berman will chair the subcommittee today, and as a sponsor of this bill I think he will be able to adequately take of the matter at hand.

I would welcome our first witnesses, from the Department of Justice Mr. Thomas E. Hookano, Deputy Assistant Attorney General for the Land and Natural Resources Division. And from the Department of the Interior, Robert Burford, Director of Bureau of Land Management.

We are very pleased that you have come here to testify today. This is a matter of extreme importance to the States. And I would tell all the witnesses today that your entire statements will appear in the record. So, if you want to summarize to expedite the matters, that would be find the committee.

So, why don't you begin and I will turn the gavel over to Mr. Berman.

TESTIMONY OF THOMAS E. HOOKANO, DEPUTY ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE; AND ROBERT BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. HOOKANO. Mr. Chairman, members of the subcommittee, we appreciate the opportunity to appear to present the views of the

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Department of Justice on H.R. 2484, and appreciate the scheduling of this hearing to accommodate the testimony of the various State attorneys general who will appear here before you today.

I would like to submit written testimony for the record, and to summarize my statement here. I would also like to give an update on the status of our discussions with the various State representatives regarding H.R. 2484 and S. 1617.

I don't think that it would be necessary to summarize the events from the passage of the Quiet Title Act in 1972 up to the time when the U.S. Supreme Court rendered its decision in *Block* v. *North Dakota*. The question is, where do we go from here?

The issue posed is whether first, there should be an unlimited waiver of the statute of limitations in the Quiet Title Act as proposed in H.R. 2484 and S. 1617, or whether the concerns expressed by the various States in the hearings which began in 1984, and as you will hear today, should be addressed in a more surgical fashion. The issue is more critically examined by considering competing interests.

We recognize that the various States have sovereign interests, which will be described very carefully in my testimony and that of Mr. Burford. Those interests, competing interests, should be balanced against the interests of the Federal Government.

Competing with the interests of the States are the interests of the land management agencies of the Federal Government. There are interests in certainty regarding planned Federal land-use activities, which include such things as wildlife refuges on Federal lands and the issuance of leases in river beds.

Another interest is in avoiding the chilling impact on investment activities in Federal lands that litigation can cause, specifically, the uncertainty that results whenever an action can be brought challenging a claim of interest in land.

There are interests which are inherent in avoiding costly, time-consuming and resource-intensive litigation, such as Quiet Title actions. Quiet Title actions often involve the situation where records are lost, destroyed, or difficult to locate.

In these times it is particularly critical, in the Department's view, that public resources should be committed to additional and new litigation only for truly pressing and significant matters where the returns merit the substantial investment of time and money that would be required. It is the Department of Justice's view that it cannot responsibily support opening up the courts to any kind of potential Quiet Title action by a State, no matter how longstanding or open the claim of the United States has been.

This, in fact, is the essence of H.R. 2484. We believe that presently there are remedies available to the States to pursue when there is a question regarding title.

First, there is always the opportunity for the States with regard to specific claims to petition Congress to legislate resolution.

Second, there is a possibility under existing legislation, for example, the Federal Land Management Policy Act, to petition the United States to issue a disclaimer of interest in land.

And third, there is always the opportunity for the States to petition the Executive to resolve title disputes either in court, or through a negotiated settlement.

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It is our view that the Department cannot support H.R. 2484 in its present form. It provides entirely too broad an exemption.

We are, however, advocates of continuing useful and productive dialog with the States. We have proposed that this dialog continue in an effort to try and resolve and harmonize the various interests of the Federal agencies, the Department, and the States. I personnaly have met with State representatives many times in the last months in an effort to resolve the competing interests, and we will continue that effort in the very near future.

In fact, yesterday a meeting took place on this subject with the Associate Attorney General and the Deputy Attorney General and with various representatives of the States. A commitment was made by the Assistant Attorney General of the Lands and Natural Resources Division to try and resolve this very important problem by, at latest, June 20 of this year.

We will continue this dialog with the States and hopefully will be able to produce resolution, either administratively or by way of some sort of legislative compromise that can take care of the problem.

I wish to thank you for this opportunity to testify.

Mr. Chairman, if there are any questions I would be pleased to answer them.

[The statement of Thomas E. Hookano follows:]

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STATEMENT

OF

THOMAS E. HOOKANO
DEPUTY ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION

QUIET TITLE TESTIMONY

Mr. Chairman, my name is Thomas E. Hookano. I am the Deputy Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice and I appreciate the opportunity to present the views of the Department on H.R. 2484. This bill, which amends 28 U.S.C. 2409a(f), would exempt the states from the 12-year statute of limitations applicable to quiet title actions against the United States. Section 2409a(f) provides that the 12-year statute of limitations shall begin to run against the party claiming land at such times as "the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." Thus, the statute begins to run when the plaintiff has actual or constructive notice of the federal government's adverse claim.

A useful starting point in analyzing the proposed legislation is the May 1983 Supreme Court decision, Block v. North Dakota, 461 U.S. 273 (1983). In that case the Court decided three important issues related to the Quiet Title Act of 1972: first, that Congress intended the Quiet Title Act to provide the exclusive means by which adverse claimants can challenge the United States' title to real property; second, that the limitations period in the Act which bars any suit unless filed within 12 years after the cause of action accrued, is fully applicable to a state; and third, that a dismissal pursuant to the limitations provision of the Act does not quiet title to the disputed land in the United States, but rather bars further litigation unless initiated by the United States.

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H.R. 2484 would legislatively overrule the Supreme Court's decision by allowing a state to commence a quiet title action against the United States at any time, regardless of when the cause of action accrued. In addition, it would require the Secretary of the Interior to annually report to Congress on the status of the negotiations of state claims.

Before getting into the specifics of our position on the proposed legislation, I thought it might be useful to spend a few minutes outlining the history behind the enactment of the Quiet Title Act. As the Supreme Court noted in Block v. North Dakota, the states, like other entities, are barred by federal sovereign immunity from suing the United States in the absence of an express waiver of this immunity by Congress. It was therefore not until passage of the Quiet Title Act that Congress elected at all to waive the immunity of the United States with respect to suits involving title to land.

After lengthy deliberation on the proposed Quiet Title Act, Congress determined that there should be some limited waiver of sovereign immunity for those wishing to assert land title claims against the United States. Ultimately it was decided that, in the interests of certainty and repose, the waiver would be circumscribed by a 12-year statute of limitations. The logic of this rationale was underscored by the Supreme Court in Block which said if there were no 12-year statute of limitations, "an unlimited number of suits involving stale claims might be instituted."

The Department's position is that H.R. 2484 as drafted should not be enacted. In the Department's view, the bill's

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application is too broad in that it opens up the United States to any kind of potential quiet title action by a state, no matter how longstanding or open the claim of the United States has been. Quiet title actions are costly, time consuming and resource intensive -- often involving situations where records are lost, destroyed or difficult to locate. At all times, but particularly in these days of tight budgets and fiscal constraint, it is the Department's view that public resources should be committed to additional and new litigation only for truly pressing and significant matters, where the need and the returns merit the substantial investment of time and money.

In past months, we have analyzed this issue at some length because our colleagues in the Western states have raised this as an issue, and because we are committed to communication and a close relationship with the states. To the extent that a real problem exists, we do not want to ignore it. But at the same time, concern over creating unrestricted opportunities to litigate costly and complex cases should counsel restraint until we understand the scope of the problem and can conclude that opening the doors of the courts to litigation of such old claims is the best solution to that problem.

In trying to assess how many significant unresolved claims are at stake, the Department has asked the states to identify such claims but they have been unable to do so with any degree of certainty. Therefore, we have no idea of the number of claims which might be brought if the statute were eliminated. Our concern is that a wholesale waiver could wreak havoc on the United States' land management responsibilities and could have a major budgetary impact even beyond increased litigation costs alone.

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The federal government's land management responsibilities involve many millions of acres of public land. We have made major investments in these lands in terms of planning and development. Mineral leases and permits have been issued on many of the rivers and lands. Eliminating the statute of limitations and opening all these properties to suit by the states would have a chilling effect on these activities.

Further, those who receive lands from the United States through patent conveyances could never be assured of secure title in the lands conveyed to them if states were able at any time to challenge the United States' title to land. Eliminating the statute of limitations could have a chilling effect on these transactions as well.

One of the concerns the states have raised in justification of their support of H.R. 2484 is that they believe they do not receive adequate notice of the United States' claims to lands. However, it should be pointed out that the United States has in place many formalized procedures for notifying the states and other interested parties of its land transactions. For example, the Bureau of Land Management provides notice of all its leasing activities through local newspaper announcements and other procedures. The states have many incentives to follow these activities because, in some instances, they are entitled to 50% of the revenues from the leases. Further, the Forest Service publicizes the comprehensive land management plans devised for managing its property. Again, the states are aware of the contents of these plans as they are normally interested participants in the public land planning process.

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In addition, it might be useful to review a few examples of the types of notice federal courts have found sufficient in specific quiet title cases brought by the states in which the statute of limitations defense by the United States was upheld. In each of these cases, the notice was clear and unambiguous and more than sufficient to put the state on notice that the United States was claiming land within its boundaries.

In California ex rel State Lands Commission v. Yuba Goldfields, Inc., decided in 1983, the court determined that participation by California in planning and negotiating activities which resulted in federal ownership of certain property in California was sufficient to put California on notice of the United States' interest in the property. Since these activities had occurred 12 years before suit was brought by California to claim the property, the court ruled the claim was barred by the statute of limitations.

In Nevada v. United States, brought in 1978, the court ruled that the United States' letter to the Deputy Surveyor General of Nevada expressing the United States' intention to acquire the Ruby Lake bed for a wildlife refuge was sufficient notice to trigger the 12 year statute. As further proof of Nevada's notice, the court noted that the Deputy Surveyor General, the Governor and the Attorney General of Nevada jointly signed an affidavit disclaiming any interest by the state in the lake bed.

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Furthermore, the states do have several options for resolving land disputes or for determining whether the United States has an interest in certain lands. The states can, and often do, petition Congress for a legislative resolution of their land claims. In addition, the states can petition the Executive to resolve a title dispute either in court or through a negotiated settlement.

To determine the United States' interest in certain lands, the states can use an existing administrative procedure. Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745) grants the Secretary of the Interior authority to issue recordable disclaimers of interests in lands. The objective of a disclaimer is to eliminate the necessity for court action or private legislation in those instances where the United States asserts no ownership or record interest in the land in question.

Despite our belief that the statute has not operated unfairly and because of our respect for the states as sovereigns, the Department has, over the last year, aggressively sought to address the states' concerns about the statute. We have, in the last year alone, initiated numerous meetings with the states in an effort to work out a mutually satisfactory resolution of our differences. Most recently, and as a result of our negotiations, the states submitted a compromise proposal by letter to Attorney General Meese. While we believed that particular proposal was too far-reaching, we were prepared to develop a counterproposal which would have moved us closer to a final compromise. Unfortunately,

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shortly after the Attorney General received their letter, a representative of the states advised us that they were withdrawing the compromise and were rethinking their position.

In order to focus upon and address this issue, the United States is willing to continue to work closely with the states on determining the scope of the problem. Our strong interest in repose and certainty counsels us to resist unrestricted litigation of old land claims, but at the same time, our interest in the concerns of states as sovereigns leads us to continue to want to work through the issue with them and to identify their precise areas of concern. When we have successfully concluded this process, we will report back to you so that legislation, if appropriate, can be considered at that time. Thank you for this opportunity to testify.

Mr. BERMAN [presiding]. Thank you very much.

I think we will hear from Mr. Burford; and then we will question both of you as a panel, if that is all right?

Mr. Burford welcome, and we would be happy for you to include your statement in record.

Mr. BURFORD. I have submitted a statement for the record.

Mr. BERMAN. That will be included.

Mr. BURFORD. I will summarize and be as brief as possible.

Mr. BERMAN. Very well.

Mr. BURFORD. I do appreciate the opportunity to appear before this committee. It is one of the committees in Congress that I have never had the chance to appear before. I noticed that Mr. Seiberling, chairman of the subcommittee I generally appear in front of, has submitted testimony on this bill; and I wondered if he was in favor or opposed to it.

Does anyone have the answer to that?

Mr. BERMAN. I just started reading his statement and I noticed that he refers to the present law as a catch-22 for those States who before they were given a right to sue, I think—I haven't finished it, but I will be glad to provide you a copy of the statement—but I think he has some concerns on the issue of land use. But I haven't finished reading it, so, I can't tell you for sure.

Mr. BURFORD. The thrust of the bill has been discussed both by the chairman and the sponsors. I would state that it is the Department of the Interior's intent that we do oppose the enactment of this bill.

We know of no reason to allow special treatment for States by exempting them from the 12-year statute of limitations for bringing civil actions against the United States, to adjudicate the question of title to lands in which the United States asserts ownership.

The purpose of the statute of limitations on the Quiet Title Act was to provide a point certain some place in time when adverse action should cease. To grant a State the authority to initiate ligi-

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tation in perpetuity, we do not believe is in the best interests of the United States.

It would be detrimental to Federal resource management programs. We are spending a lot money, Federal money, in land-use plans, construction of facilities for recreation, and building in one thing or another on some of these rivers and lakes. And this issue of navigability is one of the principal concerns of the Bureau of Land Management, and the Fish and Wildlife Service, and the other land management agencies.

Upon entering the Union the States were granted ownership of navigable rivers and lakes. What constitutes a navigable river is a source of controversy.

The Quiet Title Act waived the sovereign immunity of the United States and provided the means by which adverse claimants may challenge the title of the United States to real property.

If the States were exempted from the statute they could raise questions as to the nagivability of rivers or lakes at any time, and rivers presently managed by the Bureau of Land Management or other land management agencies, if they are ruled by the Court to be nagivable, could become the property of States. Thus the 12-year statute of limitations is critical to the United States if it is to defend its title and continue effective management of the public lands.

My prepared statement provides you with a sampling of some of the potential problems that enactment of H.R. 2484 might generate. And I think that is part of the record now, and I will skip over that portion.

In facilitating State challenges, H.R. 2484 could affect thousands of acres in the refuge system and disrupt our efforts to conserve national significant wetlands. We believe that the loss of wetlands is one of the most serious environmental problems facing the Nation today.

Less than half of the wetland acreage that once existed in the lower 48 still remains. And we are continuing to lose wetlands at the pace of nearly one-half million acres every year with far-reaching implications for the varied natural resource benefits that wetlands provide.

Harmonious, effective and efficient long-term management of Federal resources requires administrative finality where, beyond a time certain, the ownership of the resource is secure. Eliminating the 12-year statute would foreclose that ownership security and disrupt management and development of Federal interests.

Most Quiet Title actions require research of records for accurate determination of ownership. Defense of surveys is obviously more difficult for older ones than for the more recent ones.

Time dims the facts. With no time limitation, our courts could become overburdened with cases for which no good historical record exists.

We believe that the cost to the Federal Government could be staggering. The cost to litigate such cases could be enormous from the standpoint of researching old and obscure records and the need to do land surveys in an effort to estimate conditions that may have existed many years ago.

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I made a statement the other day in discussion of this bill that the U.S. cadastral survey started out about 200 years ago, and when they started out they were 100 years behind in their schedule and they are still 100 years behind in their schedule. We have many, many lands in the West that are not surveyed at the present time, and many, many lands in the West which probably never will be surveyed until 2200 or something like that.

We do not have finite boundaries on the Bureau of Land Management lands, as the Forest Service does, and the U.S. Fish and Wildlife Service does, because they were reservations taken out of the public domain. But public domain itself is not defined; we do not have boundaries on it. The request for a requirement to compile a list of these lands would be enormously expensive as far as BLM is concerned.

And quite frankly, I don't see us having the kind of budgets that are necessary. I contacted Hank Habicht yesterday, the Assistant Attorney General for Lands and Natural Resources, and stated that I would like to work with Justice and with the Western Attorneys General on this problem, to see if there is any way to address it administratively, which I am not sure there is, but I already started a process in the Bureau of Land Management to take a look at that.

As far as notice is concerned, we do notify the States in our planning process. We have active participation by the Governor's office of every State, and in that process we identify where we think resources are to the limited extent of our knowledge. We do notify the States, either the oil and gas commission, or some other appropriate State executive office in the States when we are going to issue applications for permits to drill. And we collaborate closely with them on oil and gas leasing.

At the present time, I am establishing a method whereby States will be notified, if they aren't being notified now, of any other mineral leasing.

They certainly are aware of any coal leasing because of the Governor's participation on the regional coal teams.

I am putting in place a process so that they are completely notified. I express at this present time, my willingness to work with the attorneys general and the State land commissioners on this problem to see if we can't get legislation which does not paint quite as broad an exception. If we can limit it, perhaps we can get to the point where we can recognize the problem and support some, either legislative or administrative, solution.

I find it a tough position to be in opposing legislation sponsored by someone I served in the legislature with, in Colorado, Congressman Brown; my good friend Rowena Rogers, a member of the State land board; and the absent Dwyane Woodard, with whom I also served in the legislature.

So, maybe my testimony will be taken with a grain of salt.

[The statement of Robert Burford follows:]

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STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS, COMMITTEE ON THE JUDICIARY, UNITED STATES HOUSE OF REPRESENTATIVES, ON H.R. 2484, A BILL "TO AMEND TITLE 28, UNITED STATES CODE, TO EXEMPT STATES FROM THE STATUTE OF LIMITATIONS APPLICABLE TO QUIET TITLE ACTIONS AGAINST THE UNITED STATES."

I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of the Interior's views on H.R. 2484.

H.R. 2484 would amend subsection (f) of section 2409a of title 28 United States Code, to exempt States from the 12-year statute of limitations in quiet title actions brought to adjudicate disputed title to lands in which the United States claims an interest, other than a security interest or water rights.

We oppose the enactment of H.R. 2484.

We know of no reason to allow special treatment for States by exempting them from the 12-year statute of limitations for bringing civil actions against the United States to adjudicate the question of title to lands in which the United States asserts ownership. The purpose of the statute of limitations is to provide a point certain in time when all adverse action will cease. To grant a State the authority to initiate litigation in perpetuity is not realistic.

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Eliminating the 12-year limitation would encourage the States to procrastinate in the prosecution of quiet title actions against the United States. That could be detrimental to Federal resource management programs. As the United States proceeds with management and development of Federal lands through leases, construction of facilities and other authorized actions, there is potential for loss of investment of public funds if the States can bring quiet title actions at any time it suits them to do so.

The issue of navigability of rivers and lakes is one of the principal concerns of the Bureau of Land Management (BLM), the Fish and Wildlife Service and other land management agencies. Upon entering the Union, States were granted ownership of navigable rivers and lakes. What constitutes a navigable river is a source of controversy. The Quiet Title Act waived the sovereign immunity of the United States and provides the means by which adverse claimants may challenge the title of the United States to real property.

If the States were exempted from the statute of limitations, they could raise questions as to the navigability of rivers at any time and rivers presently managed by the Bureau of Land Management or other land management agencies because they are deemed to be non-navigable could become the property of States, thereby confusing river management responsibilities. Thus, the 12-year statute of limitations is critical to the United States if it is to defend its title and continue effective management of the public lands.

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We can foresee impacts to the locatable minerals program if States are exempt. Placer mining, if occurring on a stream that has not been determined to be navigable, could be challenged at any time. With regard to salable minerals, the majority of sand and gravel mining deposits are riverlain. Exemption of States from the statute of limitations could make it more difficult to plan a sand and gravel disposal program.

I will give you just a sampling of the many potential problems enactment of H.R. 2484 might generate.

In Alaska, the issue of navigability and submerged land ownership has been marked by innovative arguments by the State and several Federal Court actions. These arguments and the litigation have raised doubts as to the ownership of submerged land. Alaska has argued that ice and the use of ice found in Alaska water columns should be a factor in navigability determinations.

The State has unsuccessfully argued that float plane use constitutes a factor for navigability determinations. These varied and often unique arguments have left the issue of water body ownership in the hands of the courts. Planning and development of minerals and lands has been restricted on many lakes and rivers pending either clear criteria for determination of navigability from the courts or judicial actions to quiet title. Alaska has challenged the

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right of the United States to lease land under the water bodies in the National Petroleum Reserve Alaska (NPR-A). The position of the United States is that the NPR-A was withdrawn before statehood and, hence, the water and underlying land is in Federal jurisdiction. An exemption of the States from the statute of limitations could continue these types of problems in perpetuity.

In Arizona, we have reason to believe the State could challenge the ownership of the Gila, Salt and Verde Rivers. Each has leasable or salable minerals and mineral leases and permits have been issued on each. Seven miles of the Gila River are located within a Wilderness Study Area under BLM jurisdiction. If the State decides to challenge the title to the three rivers and is successful, it might set its sights on other rivers and lakes formed by impoundment for irrigation purposes. In the absence of a statute of limitations, the number of title challenges which could be inititated is not calculable. There might be one on each river, or there might be hundreds, depending on how each case is structured and its individual value as precedent in future cases. Riparian cadastral surveys and the litigation concerning such cases are usually extremely complex, involve high-valued lands and require a strong and decisive Federal defense. To be able to deal with the projected lawsuits being filed and expected to be filed, it is important to retain the 12-year statute of limitations. This would keep only "current" cases before the courts, and prevent claims from continuously reappearing on the same body of water.

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In Colorado, BLM is periodically reminded that the State did not receive school sections 16 and 36 in much of western Colorado which were in the Ute Indian Reservation. Many of these sections are in lands rich in oil and gas, coal, or oil shale. Even though the State selected and received title to other lands as indemnity for the sections lost, we believe there is a lingering desire on the part of the State toward some type of action that would allow it to obtain title to lands within the mineral areas. The 12-year statute of limitations for quiet title actions acts as a deterrent to the State in pursuing this avenue of relief.

If title to lands on the Colorado River were quieted to the State, the Federal Government would lose its share of the rentals and royalties generated by the leases and permits. In addition, several sites along the river have been leased for gravel. Revenues to the Federal Government generated by these gravel sales would be lost if title were quieted to the State. The Colorado River from the Loma Linda launch site to the Colorado/Utah State line, and the Dolores River have been proposed for designation or further study as Wild and Scenic Rivers. There are other rivers under Forest Service jurisdiction that are either designated Wild and Scenic Rivers or are proposed Wild and Scenic River Study Areas. The Gunnison, Yampa, Dolores, and Colorado Rivers all flow through or are adjacent to Wilderness Study Areas.

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In Montana, North Dakota and South Dakota, almost every river and lake in the three States have potential for leasable minerals. Nearly all sand and gravel deposits are considered to be common variety minerals and, therefore, are salable minerals. One of the best sources of sand and gravel is in existing or old geologic stream channel beds. Sand and gravel deposits may occur in all river beds within the three-state area.

If navigability becomes an issue, ownership of the sand and gravel and other minerals would come into question. In addition, river management could become a problem in areas like the Madison River, located in the Bear Trap Canyon Wilderness Area; and the Axolotl Lakes and Blue Lake, located in Wilderness Study Areas.

In Nevada, Ruby Lake in Elko County is under the jurisdiction of the Fish and Wildlife Service. That agency is charged with conservation of nationally significant fish and wildlife resources. This mandate includes the conservation of migratory bird resources protected by several international treaties and the protection and recovery of species listed as endangered or threatened pursuant to the Endangered Species Act. In carrying out these responsibilities, the Fish and Wildlife Service has acquired much wetland habitat for inclusion in the National Wildlife Refuge System. Some of the habitat acquired includes former lakebeds that may have been navigable at the time States were admitted to the Union and, as such, may have been property of States. As water levels recede over time and lakebeds become vegetated and

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non-navigable, adjoining landowners take possession of such reliction lands and assert private titles. The United States has acquired a number of such properties from the private owners. Some of these former lakebeds have been developed and improved by damming or diking to create impoundments. The 12-year statute of limitations is a critical factor for the United States to defend title and to continue effective administration of such lands as part of the refuge system.

A case in point is Nevada v. United States, 547 F. Supp. 776 (D. Nev. 1982), aff'd F.2d (9th Cir., Apr. 20, 1984), involving the Ruby Lake National Wildlife Refuge, Nevada. The land in the lakebed was acquired by the United States from private landowners in 1938 and 1939 and was later impounded by the Fish and Wildlife Service to develop waterfowl habitat. The Ruby Lake National Wildlife Refuge consists of 37,362 acres of which almost 24,000 acres are former lakebed lands. The Ruby Lake refuge supports the densest nesting population of canvasback ducks in the United States. It is also a major redhead duck production area. In all, 15 different species of waterfowl nest on the refuge. The refuge also provides a significant boating and sport fishery resource to local residents.

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As a result of a dispute over regulation of boating by the Fish and Wildlife Service, the State claimed title to the bed of Ruby Lake by virtue of its ownership of navigable lakes and filed its court case in 1978. Had the State prevailed and received title to the bed of Ruby Lake, the United States would have been forced to repurchase the property or, in the alternative, abandon the refuge.

The Ninth Circuit Court of Appeals, in its affirmation of the Nevada District Court, held that the State claim to the bed of Ruby Lake was barred by the 12-year statute of limitation. We are concerned that if enacted, the bill might be construed to be retroactive, thus reopening the case at Ruby Lake.

Portions of the Humboldt River cross lands administered by BLM and the Bureau of Reclamation. This area has considerable potential for development of leasable and salable minerals, primarily geothermal resources. Navigability claims would put ownership of these resources in question.

If navigability becomes an issue in New Mexico and Oklahoma, ownership problems would result in several areas:

- o portions of the East Canadian and Red Rivers in Oklahoma which have been leased for development of Federal minerals;

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- portions of the Rio Grande, Chama, San Juan, and the Pecos Rivers in New Mexico, where the United States has jurisdiction and there is potential value for leasable and salable minerals;

- portions of the designated Rio Grande Wild and Scenic River bed considered under BLM jurisdiction;

- and the Chama River, located in the Gila Lower Box Wilderness Study Area.

In Oregon, the Owyhee River has been designated a Wild and Scenic River and portions flow through a Wilderness Study Area; the John Day River is a Wild and Scenic Study River which flows through a Wilderness Study Area; and the Rogue River has been designated a Wild and Scenic River. Management of these areas would be difficult if the State claims ownership and litigation were to be initiated many years hence.

In Utah, questions regarding navigability could affect:

- Sevier Lake, where there are Federal oil and gas leases, potash prospecting permits and mining claims;

- the Dolores River where from confluence with the Colorado River to the Utah/Colorado State line there is potential value for leasable and salable minerals and which, in addition, is within a Wild and Scenic River Study Area;

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- the Colorado River where from confluence with the Dolores River to the Utah/Colorado State line there is potential value for leasable or salable minerals and which is within a Wild and Scenic River Study Area;

- 17 miles of the Colorado River in the Westwater Canyon which is within the Westwater Canyon Wilderness Study Area;

- and Fish Lake in the Fish Lake National Forest which has potential for leasable and salable minerals. In addition, the State of the Utah has issued a few State mineral leases in the Colorado River bed where BLM claims jurisdiction.

There are a number of refuges administered by the Fish and Wildlife Service where former lakes or former navigable water areas have been acquired and included in National Wildlife Refuges. The Fish and Wildlife Service has also acquired a significant amount of coastal wetland habitat for inclusion in the refuge system, another class of refuge lands that are likely to be affected by enactment of this bill. It is not possible without considerable research to identify all such areas, but the following refuges could be impacted:

Big Lake NWR, Arkansas

Wapanocca NWR, Arkansas

Clear Lake NWR, California

Lower Klamath NWR, California, Oregon

Bear Lake NWR, Idaho

Grays Lake NWR, Idaho

St. Marks NWR, Florida

Sabine NWR, Louisiana

Agassiz Agassiz NWR, Minnesota

Yazoc NWR, Mississippi

Malheur NWR, Oregon

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In facilitating State challenge to areas such as these, H.R. 2484 could affect thousands of acres in the refuge system and disrupt our efforts to conserve nationally significant wetlands. We believe that the loss of wetlands is one of the most serious environmental problems facing the Nation today. Less than half of the wetland acreage that once existed in the lower 48 States still remains, and we are continuing to lose wetlands at the pace of nearly one-half million acres every year, with far-reaching implications for the varied natural resource benefits that wetlands provide.

Harmonious, effective and efficient long-term management of Federal resources requires administrative finality where, beyond a time certain, the ownership of the resource is secure. Eliminating the 12-year statute of limitations for the States would foreclose that ownership security and disrupt management and development of Federal interests.

Most quiet title actions require research of records for accurate determination of ownership. Defense of surveys is obviously more difficult for older ones than the more recent ones. Time dims the facts. With no time limitation, our courts could become overburdened with cases for which no good historical record exists.

If the 12-year statute of limitation is removed, the cost to the Federal government could be staggering. The costs to litigate such cases could be enormous from the standpoint of researching old and obscure records and the need to do land surveys in an effort to estimate conditions that may have existed many years ago.

This concludes my statement. I will be pleased to respond to any questions you may have.

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Mr. BERMAN. Thank you both very much.

A couple of questions. Let me just read, because I think he summarizes the problem well. I would ask either of you if you disagree with the statement that Mr. Seiberling makes before he goes on to share some of the concerns that you shared here.

He says:

> That I think that is clear that the rigid application of the 12-year limit may, indeed, sometimes put responsible officials in the anomalous and undesirable Catch-22 position of being obliged to act as public trustees with regard to state claims to federally held lands they believe are State property, but of being unable to obtain a decision on the merit of such claims.
>
> This apparent dilemma seems most acute where the State could be considered to have known of a Federal claim more than 12 years before the Quiet Title Act itself was enacted, because in such cases if the 12-year limitation is held to have begun to run when the State knew of the Federal claim, the effect is that the State's ability to bring its suit expired before the United States had even consented to be sued.

Mr. BURFORD. I think that he is accurately describing the *North Dakota* case right there. And I believe that one of your panel members, who is going to testify, is very familiar with that case and can discuss it in detail, but that, I would agree with the statement that Mr. Seiberling made.

Mr. HOOKANO. I would just add, as described in the decision in the *North Dakota* case, that there was some considerable discussion, I believe, at the time the Quiet Title Act was being considered with regard to the statute of limitations. And as the court noted in the *Block* decision, the 12-year statute was really adopted to prevent an unlimited number of suits involving stale claims from being instituted.

And, I think, that was the rationale behind adopting the 12-year statute. There is good reason to support it.

But Congressman Seiberling is correct, however, when he says that there are some suits that were deemed barred at the time of the enactment of the 1972 legislation.

Mr. BERMAN. And by parties that had no opportunity to ever litigate this issue.

Mr. HOOKANO. I believe that Congress made a very reasoned and measured choice to waive sovereign immunity in a limited circumstance. Those conditions in which sovereign immunity would be waived were well thought out when the act was adopted.

Mr. BERMAN. You talked about some alternatives, but one of your alternatives was petitioning Congress presumably on a parcel-by-parcel basis through some legislative action where Congress would now become the arbiter of the merits of the State's claims to ownership, as opposed to the Federal Government claims. Does that really seem like a very meaningful solution to deal with the totality of this problem?

Mr. HOOKANO. Well, Congressman, we have in the last 1½ years since the hearings, in June 1984, been seeking information from the States regarding the magnitude of the problem. Our presumption was that since the States were urging the adoption of the legislation that there were a number of claims that, more than likely, were being barred from being brought to court, because of the 12-year statute.

We have been unable to obtain information from the States thus far, which gives us an idea of the number of claims that are being

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barred and, therefore, the reason to have a lifting of the statute of limitations. This leads us to believe then, that the States are really looking at more narrow interests, specific rivers, specific lakebeds, areas that can be identified within the State that are posing a specific problem.

If we are only talking about a few isolated instances, we can see no reason to have a broad lifting of the statute of limitations. Those instances may be appropriate then, either for specific resolution by the Congress, petitioning to the Executive for resolution, either by our filing a Quiet Title action to resolve it or by agreeing that the statute of limitations would not be raised if the State chose to initiate action; or administratively where there is some doubt as to whether or not the United States is actually setting forth a claim of interest by pursuing that procedure under the Federal Land Management Policy Act, which would administratively result in a disclaimer of interest.

Mr. BERMAN. I think the panel that follows can address the extent to which your suggestions constitute a satisfactory alternative to a legislative approach.

Just in conclusion I will say that I was happy to hear both of you indicate your willingness to negotiate this.

It is my hope that I can prevail upon my colleagues, and thereby let you know that those negotiations should be undertaken in the context that there is a strong intent within Congress to move ahead on this legislation if there isn't a satisfactory negotiated solution, either executive or administrative branch, or a compromise legislative proposal.

In other words, the atmosphere of the negotiations should present you with the possibility of something to lose as well if you don't negotiate.

Mr. HOOKANO. Certainly.

Mr. BERMAN. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

If I understand what you all are suggesting it is that your problem is not with States that may have a legitimate claim on Federal land—I am not trying to put words in your mouth—but basically, what I am hearing you say is you don't have problems with adjudicating proper claims, you have a problem with an unlimited open statute that doesn't put an end to it?

Mr. HOOKANO. Congressman, there is a question regarding the magnitude of the claims that would be presented, and the areas that we are talking about, and thus far we are dealing with an unknown.

In all of our discussions with the various State representatives, we have been unable to identify what it is we are talking about in terms of numbers of claims or areas, so, therefore, it is difficult for us to respond. But we are generally sympathetic to the sovereign State interests and, therefore, that is why we want to continue this dialog.

Mr. BROWN. If the bill says that they have got 10 more years to bring these claims, does that give you a problem?

Mr. HOOKANO. If they have 10 more years to bring the claim, it does render some ongoing Federal activities uncertain. Again, I think these were alluded to by Mr. Burford in his testimony and in

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my testimony. The Federal Government engages in lengthly planning processes, for example, with regard to the use of national parklands, or with regard to designating areas where mineral leases will be advertised. If the States can at any time come in and challenge those Federal activities——

Mr. BROWN. I don't mean to be rude. I am not trying to catch you short on this thing. I understand your point of view; OK. I am trying to get it resolved.

If your point is that the time is wrong and you don't want anymore claims, and that is your position, great. I understand that. I don't agree with it, but I understand it.

If your position is that an unlimited open statute is a problem, and a short period of time would be workable for you, that is a whole different position.

I guess my question is, can you live on additional time for the States to file these claims?

Mr. HOOKANO. I think it may be more productive for us to examine, Congressman, whether or not there are specific categories of lands that should be exempted from the statute.

Mr. BROWN. So, your thought would be that only certain categories of land might be opened up?

Mr. HOOKANO. This is the substance of our most recent discussions with States.

Mr. BROWN. If we are dealing with restricted areas of land, do you have 1 year limit in mind?

Mr. HOOKANO. One of the proposals that was put to us, that we have to evaluate by discussing with the various agencies, is, for example, having an exception to the statute for submerged lands. I believe that the latest proposal is with no year limitation attached to it.

But, again, what we want to do is meet with the States and carry on a dialog with regard to the extent of those claims.

Mr. BROWN. I appreciate you working with them. I have a feeling that with good faith on both sides, this can be resolved very quickly. I just can't imagine the Federal Government has any interest in denying a legitimate claim here. I can well appreciate your interest in getting it resolved and put to bed.

Mr. HOOKANO. The attorney general and the assistant attorney general, I think, have made a commitment to give this their highest priority attention, and to try and work out some sort of resolution, as I indicated in my testimony, by June 1986.

Mr. BROWN. We were thinking this a quid pro quo for cutting off revenue sharing, and cutting off payment-in-kind, by giving them back their land.

Some, I can appreciate, might not see the humor in that.

Mr. BURFORD. You have a perverted sense of humor.

Mr. BROWN. I have been in Washington almost as long as you.

Mr. BERMAN. Thank you both very much.

We will now hear from the next panel.

Mr. BURFORD. I think I like this committee better than some of the others.

Mr. BERMAN. We are very judicious.

Mr. BURFORD. Thank you.

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Mr. BERMAN. Have the sovereign States been able to figure out an order among themselves for testifying?

TESTIMONY OF JIM JONES, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, IDAHO; JAN STEVENS, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, CALIFORNIA; NICHOLAS SPAETH, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, NORTH DAKOTA; AND ROWENA ROGERS, MEMBER OF THE BOARD OF LAND COMMISSIONERS, COLORADO

Mr. JONES. I think so, Congressman Berman. I will lead off.

I am Jim Jones, the attorney general from Idaho. I am here representing not only my State, but the Western Conference of Attorneys General and the National Association of Attorneys General. Attorney General Nick Sparth, my colleague from North Dakota, will cover some of the areas, and I will cover some of the others.

First of all, I should point out to you that the application of the statute of limitations to the States under the Federal Quiet Title Act came as somewhat of a surprise, because for quite a number of years after the 1972 act was passed, the States, and I think to an extent the U.S. Justice Department, had the opinion that the statute of limitations did not apply to State claims.

It was only when the Supreme Court decided the *Block* case that they said, since there is no specific exemption for the States their claims are covered.

It has created, I think, a very serious Federal/State problem. And that is indicated by the unanimous support of the national association in favor of some remedial legislation.

I should point out that the concern about increased litigation, that is, that if this piece of legislation is passed there will be a floodgate opened to new litigation, is a red herring. It won't happen.

We have been through a test period. When the 1972 act was passed it for the first time allowed the States as well as other litigants to go in and contest title. The States thought that they were not covered, and yet in the 6-year period following the enactment of the legislation, the California attorney general office was only able to identify six State claims that were brought.

So, we are not going to be opening the floodgates to litigation. I think the course of least litigation is to make a complete exemption for State claims. The reason I say that is because we only litigate those claims where a controversy arises between the Federal and State governments.

If there is no present controversy, assuming we have an exemption, and we are not being pressed by an upcoming bar, or a potential bar, we have no reason to litigate the claim. We have enough business to keep us busy without going out and digging up a bunch of stale claims and litigating them against the Federal Government.

We are not certain at present when the statute starts running. The courts have accepted different criteria and the Justice Department has pushed the statute of limitations to extremes as to when the statute starts running—that is when the State knew or should have known of the claims.

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They have pushed it to the limits. They contend in some cases, that the State knew of the claim, or should have known of it, upon attainment of statehood back in the early part of the century.

So, we may never have the opportunity to litigate. They say in some instances, like the *Block* case, that records in Montana should give North Dakota notice of a competing Federal claim. Marking trees out in the forest and trespassing onto State property should give notice of a Federal claim.

Those are the types of the things that we are concerned about. And when there is that much uncertainty, the only way we can protect ourselves at the present time is to inventory all possible claims that we have and file suit so that we are not in a position of blowing the statute of limitations.

I have got one claim that I intend to bring, in any case. The Federal Government may contend that we knew of a competing Federal claim on statehood, but I have got to bring the suit in any event, if we don't get some relief from the limitation, I have got three other suits that I probably will bring: One dealing with a portion of the Clearwater River. One dealing with a portion of the Snake River. And one, and we are very seriously considering this, where we in our complaint set out the north, south, east, and west boundaries of the State, and ask the district court to quiet title to every inch of river bottom, and every acre of lake bed, because I don't want to be in a position of having to confess to my people, "well, we didn't know the statute of limitations was running on this important portion of the river, and so we blew the statute". I am not going to be in that position. I think the other States are going to increase their litigation so that they are not caught in a position of having blown the statute of limitations. So I say the concern that passage of the bill would increase litigation is not a valid concern.

One of the other concerns that has been raised is an environmental concern. And I have to tell you that most of the claims that we are talking about deal with lands that the States received upon attaining statehood—submerged lands which are held in trust by the States for the benefit of their citizens, for navigation, recreation, and so on. Or school trust lands and other trust lands that are held in trust for various institutions. Those are the kinds of lands that the States have a trust re ponsibility for. And they have to manage those lands for the benefit of their citizens.

I am just as comfortable with the States controlling the submerged lands and holding them in that specific trust for the benefit of their people, as I am with the Federal Government, which has no such responsibility to the citizens. So, I think that the environmental concern is a red herring, too. I think that we can do just as good a job, and, in fact, we have that specific trust responsibility which could require us to do a better job.

We are now working with the Justice Department. We have suggested to them that we can all live with an exemption that applies to submerged lands, lake, and river beds, and those lands that we received upon attaining statehood, those trust lands that were granted for the purpose of supporting public schools and other public institutions. Justice seems to be willing to consider that as an alternative. And we are very hopeful that we can get it worked out.

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We don't see why we shouldn't have that kind of an exemption because those are the lands that we are trustees for, and if we can't litigate title, how can we ever carry out that trust responsibility. That trust responsibility, particularly with the school lands, was a trust responsibility imposed by the U.S. Congress.

So, we would ask the committee's support for our legislation. We think it will result in much less litigation than the current situation, or even some other kind of limitation period.

I will let my associate and companion from North Dakota present the rest of our case.

Mr. BERMAN. Thank you, Attorney General Jones.

[The statement of Jim Jones follows:]

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TESTIMONY OF

JIM JONES

ATTORNEY GENERAL

STATE OF IDAHO

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW

AND GOVERNMENTAL RELATIONS

OF THE HOUSE COMMITTEE

ON THE

JUDICIARY

MARCH 5, 1986

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Chairman Glickman, other members of the subcommittee:

I am Jim Jones, the Attorney General of Idaho. I appreciate the opportunity to appear here today on behalf of my state and the National Association of Attorneys General in support of H.R. 2484. This important legislation, which would exempt states from the 12-year statute of limitations in the Federal Quiet Title Act, is essential to good federal-state relations in that it will allow for the peaceful resolution of title disputes between the federal and state governments. The legislation has the strong support of the National and Western Associations of Attorneys General, the National Governors Association, the National Conference of State Legislatures, and the Western States Land Commissioners Association.

In 1983 the U.S. Supreme Court surprised many observers by holding in Block v. North Dakota, 461 U.S. 273, that states are subject to the 12-year statute of limitations contained in 28 U.S.C. § 2409a. Until the Block decision it had been thought that the claims of sovereign states were exempt from statutes of limitations. This is certainly the accepted rule under the common law and under previous decisions of the U.S. Supreme Court (see, Utah Power and Light Company v. U.S., (1917) 243 U.S. 389). When the Federal Quiet Title Act was enacted in 1972 it was not contemplated that the 12-year statute of limitations provided for in the act would be utilized as a bar against state claims. The legislative history of the act does not indicate that Congress intended it to apply to the claims of sovereign states. However,

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the Supreme Court did apply the 12-year limitation to state claims in the Block decision and it is from that onerous decision that we seek relief here today.

The Block decision merely permits the federal government to avoid a determination of title when a dispute arises between it and a state government over the ownership of certain lands. Although the federal government may proceed forward with legal action to determine the ownership question, the states do not have the ability to do likewise if the limitations period has run. The result is that the ownership question remains in limbo. The title dispute is left unresolved, making proper planning and development virtually impossible.

The greatest difficulty is posed for the public lands states in the West where large holdings of federal land are checkerboarded by significant state-owned lands. Large federal grants were made to these states upon the attainment of statehood under the equal footing doctrine. The grants include the beds of navigable lakes and rivers and two to four sections per township granted for the support of public schools and other public institutions. With the interspersed pattern of ownership and the large acreages involved it is only natural that title disputes will arise. It is, therefore, essential that the states have the ability to resolve such disputes on the merits.

The most common problem posed for Idaho and many of the other public lands states has to do with submerged lands. Title to the

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beds of navigable lakes and rivers passed to the various states at statehood. The states hold these lands in trust for their citizens subject only to a paramount federal servitude for navigation. Since the federal government often retains ownership of the uplands bordering these submerged lands, determination of title to such river and lakebeds has been a continuing source of controversy.

Most public land states are just beginning to inventory and regulate these submerged lands. Unlike a private owner with less extensive holdings and a greater ability to monitor and control his property, the states are not generally in a position to assess the effect of thousands of federal decisions made over the years with respect to the public domain to determine whether they may constitute an infringement of the state's ownership or control over these large and scattered holdings. Many times decisions are made at the various levels of the federal bureaucracy which can give rise to a claim of federal ownership or control over portions of the state-held submerged lands or other state lands, resulting in a potential defense against any later state action to clear title to the property.

The Justice Department has recognized the need for providing relief to the states with regard to determining title to submerged lands. In testimony presented to this Subcommittee on June 13, 1984, F. Henry Habicht, II, the Assistant Attorney General for Land and Natural Resources, stated as follows:

> Based on our experience in litigation and our discussions with state officials, it appears that

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> the real problem is not with the common quiet title action wherein the United States asserts ownership based on a record of title of which actual or constructive notice is a relatively straight-forward matter of proof. Rather, the problem from the states' perspective arises in situations involving issue of navigability of rivers and lakes coupled with an assertion by the United States of ownership of the bed of that body of water based on actions of which a state claims insufficient notice. These are notice issues of particular concern to the states, because under operation of the equal footing doctrine, title to the bed of navigable waters generally vests in the state upon admission to the Union. (Hearing on H.R. 3917, June 13, 1984, No. 38-6180-843, pp. 13-14)

Mr. Habicht went on to indicate the desirability of a definite notice provision to deal with the submerged lands issue.

However, another issue is of general concern to the states beyond the submerged lands issue. Lands granted to the state for the support of public schools and other public institutions under the equal footing doctrine are also a source of potential federal-state title disputes. Most of the western states received two to four sections in every township for the support of public schools at statehood. These grants were made on the condition that the states promise not to tax federal property located within state boundaries. The grants have been characterized as irrevocable contracts between the states and the federal government. (See, Oklahoma Education Association, Inc. v. Nigh, 642 P.2d 230 (Okl. 1982), Lassen v. Arizona, 385 U.S. 458 (1967)). As a condition of these contracts the states were required to manage the lands as a trustee with the "highest trust responsibility". One might wonder how the state trustees are to carry out that responsibility if

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they are unable to have a determination of title disputes and to secure absolute control over the lands which constitute the trust corpus for the purpose of managing them for the best interests of the public school beneficiaries. We are asking Congress to provide the means for the state trustees to carry out their duties with regard to trust lands where federal-state ownership disputes exist.

The Justice Department has expressed opposition to a complete exemption of state claims from the provisions of the 12-year statute of limitations. It is contended that such an exemption would result in increased litigation of land claims. Quite frankly, I think the actual situation is just the contrary. That is, failure to exempt state claims will result in increased litigation. A number of states, including Idaho, are contemplating the filing of a number of claims involving title to submerged lands so as to avoid a court holding in the future that some innocuous federal action tolled the statute of limitations. We do not want to be in a position of finding out at some later date that some generally unnoticed federal assertion of control has prevented us from litigating a later-arising ownership dispute. My office is currently working up three cases, including one involving the question of ownership of the southern portion of the bed of Lake Coeur d'Alene, so that we do not encounter a future bar by the 12-year limitations period. I note that the State of Alaska is doing likewise with respect to a significantly greater number of claims. My office is also contemplating the

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possibility of initiating a general quiet title action with respect to all navigable lake and riverbeds within our boundaries so that we do not risk the imposition of the statute of limitations defense with respect to some of the hundreds of miles of navigable rivers within our state or with respect to some of the hundreds of acres of navigable lakes. Such litigation would not be necessary if Congress were to grant the requested exemption. With such an exemption these matters would only be litigated when an actual dispute arose.

Should the Congress decide to grant something other than a complete exemption for state claims, it is essential that a procedure be adopted so as to insure unequivocal notice to the states regarding federal claims. At present the states may be barred where they knew or should have known of a federal claim. As indicated above, this is an onerous standard for the states, given their large and widely-scattered holdings. In previous litigation the Department of Justice has consistently attempted to push the notice element to unreasonable extremes. For example, it has been asserted that Utah should have been aware of a federal claim with respect to Utah Lake at the time Utah attained statehood. Department attorneys have argued that California's participation in a joint federal-state reclamation project should have given it notice of a federal claim to the bed of the Yuba River. In the Block case it was contended that North Dakota should have been aware of and put on notice of a federal claim by virtue of BLM records in Montana. These instances indicate the necessity for an unequivocal notice procedure so that the states are not surprised and precluded from litigating title by virtue of some unnoticed or seemingly unimportant federal action.

The legislation before you today will solve the difficulties I have outlined in my testimony. It will allow for the orderly resolution of title disputes between the federal and state governments. It will reduce, rather than increase, litigation of title questions. I commend it to you as an important means for the improvement of relationships between the federal government and the various state governments.

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

March 12, 1986

The Honorable Dan Glickman
Chairman
Subcommittee on Administrative Law
and Government Relations
House Committee on the Judiciary
Suite 2137
Rayborn House Office Building
Washington, D.C. 20515

Dear Representative Glickman:

In a statement submitted to the Subcommittee on Administrative Law and Governmental Relations, the Honorable John F. Seiberling suggested that H.R. 2484 should not move forward until several concerns he raised are addressed. I intend to address his concerns and demonstrate that H.R. 2484 is a sound response to the anomalous and undesirable "catch 22" situation the states are now confronting.

First, Mr. Seiberling expresses concern that "H.R. 2484 could have a direct and substantial impact on a number of important Federal policies and programs regarding the management of the Federally-owned lands and the conservation and development of their renewable and non-renewable resources and the protection of their natural, scientific, cultural, recreational, and other values." The lands that the states would seek to quiet title to are surface and submerged lands. As to the surface lands located within lands reserved for federal purposes, issues of state ownership are resolved by the in lieu lands selection process. Further, even if a state was able to establish ownership to lands within a federally reserved area, the state's use of the property would be limited by the act creating the federal reservation. Thus, H.R. 2484 creates no conflict with the management of federally reserved surface lands.

The majority of the limited number of actions that might be commenced if this amendment were enacted would be for resolving

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claims to ownership of submerged lands. These lands are subject to the public trust doctrine. The seminal case of Illinois Central Railroad Co. v. Illinois, 146 U.S. 387 (1892) established that all lands beneath navigable waterways are held in trust for the people of the state so that they may enjoy navigation, commerce, and fishing. Since this early case, the public trust doctrine has evolved as a matter of state law to protect recreational uses as well, and has become "a dynamic common-law principle flexible enough to meet modern needs." District of Columbia v. Air Florida, Inc., 750 F.2d 1077, 1083 (D. D.C. 1984). The states have a fiduciary duty as trustees of submerged lands to see that the broad public interest is protected. This common-law duty is stronger than the duty owed by the federal government because it is not at all clear that the public trust doctrine applies to federally owned submerged lands; thus the disposition of such lands may be subject to the whims of Congress. See id. at 1083-1086. Therefore, state ownership of submerged lands may provide better resource management and environmental protection than the federal government can provide.

Second, Mr. Seiberling expresses concern that "if the federal lands are to be properly managed as required by law, the federal government must be able to devote the necessary resources to these purposes, rather than to litigation over which lands are actually part of the American people's estate." I suggest that subjecting states to the 12-year statute of limitations will result in the diversion of more federal funds to litigation than will be required under this bill. If the states are not provided relief, they will be forced to file quiet title actions to all lands received from the federal government to avoid the possibility that at some later date the federal government will assert that a quiet title action is barred because of some innocuous letter or statement of a federal official asserting ownership. If the states are exempted from the 12-year limitation, this speculative litigation would be avoided.

Third, Mr. Seiberling has concerns over the effects that the amendment might have on federal reserved water rights. Exempting states from the 12-year limitation will have no substantive impact on water rights because questions of title are entirely separate from questions of water rights.

Finally, Mr. Seiberling expresses concern about "the nature and extent of the various State claims to ownership of lands now held by the federal government which might be revived by enactment of H.R. 2484." The principle of res judicata, however, precludes the revival of any claims determined upon the merits. Thus, only

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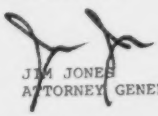
unresolved claims will be covered by this act. I submit that resolution of disputes on the merits is consistent with sound public policy and permits the states to carry out their obligation to act as public trustees with regard to federally granted lands.

In conclusion, I feel that Mr. Seiberling's concerns about H.R. 3917 can be laid to rest. H.R. 3917 presents a fair solution to a difficult problem, one that will not unduly increase burdensome litigation nor adversely impact federal land management. I urge you and your committee to recommend passage of H.R. 3917.

With best wishes, I am,

Sincerely,



JIM JONES
ATTORNEY GENERAL

JTJ/tg

Mr. SPAETH. Mr. Chairman, my name is Nicholas Spaeth, and I am the attorney general of North Dakota. I think it is fair to say that we come to you today with considerable frustration and some anger over the response that we have received over the last couple of years from the Government on this issue.

This bill was here 2 years ago, and I know from reading the record that you heard testimony on it then.

Mr. Hookano said earlier that he met with us several times during the past 3 months. Well, in fact, he has met two or three times in the last couple of days, while we were here.

I think it is a little misleading to suggest that somehow the Federal Government has been working very vigorously on this in the last 2 years trying to resolve it. We haven't gotten anywhere with them until the last couple of days.

He confessed the other night at a cocktail party that they were posturing on a lot of this stuff. And I think that is an accurate description, that they were posturing some of their concerns they raise about why this is objectionable. I think that is a pretty accurate summary of what is going on here. And I think I would like to talk a little bit about some of this posturing.

We heard first of all that this is going to pose a great threat to Federal lands. And he mentioned wildlife refuges and wetlands, and also a chilling effect on Federal leasing activities.

That is a total misapprehension of what this bill does. We are not asking for a single square inch of Federal land in this. We are asking, simply, where it is our land, where it is clearly our land, for a chance to quiet title in any kind of competing Federal claim that isn't legitimate. So, we are not trying to take away any land that doesn't belong to us already.

And, I think, Mr. Burford's testimony shows to some extent the misapprehension they have of what this does. I don't think Mr. Burford understands. If this bill doesn't pass, they are under the impression that they get to keep these lands, and that they own them. Nothing could be further from the truth.

They are probably still our lands to use as States. The only problem is we can't quiet title to them, and get clear title. But we can

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go in and use them, because they are not Federal lands, they are State lands. And I think that kind of misunderstanding is running all the way through the testimony that you heard from BLM today.

They also spoke about a staggering cost. That is a little bit hard to believe. We know after looking at this issue carefully that this is going to result in less litigation. Fewer claims, because we are not going to be compelled to bring them all at once.

Moreover, part of the staggering costs as you might of heard, had to do with looking at ancient records, digging them out. The only reason ancient records ever need to be dug out is to decide whether or not we had notice at the turn of the century, or whatever, about some competing Federal claim.

But if we are not barred by the statute of limitations, we have no reason to look at any ancient records. The only staggering costs that is ever going to occur is if we don't get this relief, if we can't go into court and quiet title at any time we see fit.

Mr. Hookano suggested some other remedy was to petition Congress. I don't think that this body wants to put itself in the position of every time there is a dispute over an acre of land anywhere in the United States between the Federal Government and State Governments, for us to have to come in with a private bill and have you resolve that controversy. That is exactly the kind of controversy that belongs in the courtroom. And that is what we are asking for here. He also mentioned the possibility of petitioning the U.S. to disclaim ownership. I am not aware that they have ever done this. And they have had ample opportunities to disclaim ownership. For example, the Little Missouri River in North Dakota, which was the issue in *Block*. They are not willing to do it there.

They are not willing to cooperate in these so-called other avenues, at least that they claim are available. The U.S. position on this borders on the ludicrous. They admit that a statute was passed in 1972 which permitted us to bring these claims. At the same time, however, they claimed that virtually all of the cases, by the time that statute was passed, the statute had already run on all of our claims. So, we never had the opportunity to clear title to any of this disputed land.

This bill in front of you is supported by every Governor in this country, every attorney general, every land commissioner, it has unanimous support in every State. There have been no dissents to it. It is a good bill. It is the least-costly solution to a perplexing problem to us.

And I want to finish just by giving you the example of what is going on in North Dakota right now. We have oil and gas leases producing on the Little Missouri River for which royalties are being paid into an escrow account. Why into an escrow account? Because the producer doesn't know whether to pay them to the Federal or State Government. They are just sitting there, and by the way, not drawing interest in the interim.

We are also sitting in a position where there have been 20 or 30 permits to drill that we have issued. And I am also a member of our State industrial commission, which regulates oil and gas conservation, but no drilling is occurring because the producers don't know who owns the bed, and who to pay royalties to. Instead of, as one of the other witnesses said, instead of this bill inhibiting Feder-

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al leasing, it is going to enhance Federal leasing, and State leasing as well, because finally someone will know who owns a particularly disputed piece of land. And that is what this really is all about.

Mr. BERMAN. Not offshore though?

Mr. SPAETH. We are not proposing to do any of that.

That was another issue that we took up with Mr. Hodel this morning.

I think, Mr. Hodel understood our concerns when we came to see him today. And I think we are going to get some more cooperation with Interior on this.

But I have to say in all candor to you it has been a frustrating experience for us dealing with Federal bureaucracy in this issue, because we really haven't gotten much cooperation up until now. And it has been more than 2 years since we first raised this issue.

Mr. BERMAN. Thank you very much.

[The statement of Nicholas J. Spaeth follows:]

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STATEMENT OF NICHOLAS J. SPAETH
ATTORNEY GENERAL OF THE
STATE OF NORTH DAKOTA

BEFORE THE SUBCOMMITTEE ON
ADMINISTRATIVE LAW AND GOVERNMENTAL
RELATIONS OF THE COMMITTEE ON
THE JUDICIARY

MARCH 5, 1986

RE: H.R. 2484 To exempt states from the statute of limitations applicable to quiet title actions against the United States.

Mr. Chairman and distinguished members of this Subcommittee:

We appreciate this opportunity to present to you the position of the State of North Dakota concerning H.R. 2484, which proposes to amend the Federal Quiet Title Act, 28 U.S.C. §2409a(f), to exempt states from the twelve year statute of limitations applicable to quiet title actions against the United States. This legislation is a direct response to a recent Supreme Court decision which has severely curtailed the rights of the states to resolve title disputes with the United States.

In Block v. North Dakota, 461 U.S. 273 (1983) the Supreme Court held, contrary to the holding of the Federal District Court for North Dakota and the United States Court of Appeals for the Eighth Circuit, that the twelve year statute of limitations established by Congress in the Quiet Title Act is applicable to the states as well as private parties. In reaching this decision, the Court rejected the traditional common law rule that states as sovereigns are not subject

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to statutes of limitations. The effect of this decision has been that North Dakota and other states similarly situated may well have their access to the federal courts cut off in resolving state/federal title disputes. If a state's cause of action arose more than twelve years prior to the enactment of the Quiet Title Act of 1972 or if an officer of the state has failed to properly take steps to protect the state from an encroaching claim of the federal government, the merits of a title dispute may never be resolved.

H.R. 2484 would overrule the decision of the Supreme Court in the Block case by exempting states from the statute of limitations applicable to quiet title actions against the United States. Accordingly, the legislation would once again restore to the states access to the federal courts so that state/federal title disputes might be resolved.

Since it was the Supreme Court's decision in the Block case which construed the statute of limitations provisions in the Quiet Title Act to be applicable to the states, North Dakota, based on a first hand experience, is keenly aware of the adverse effects the Court's interpretation has had in resolving state/federal title disputes. North Dakota is similarly aware that a remedy to this serious problem must come from Congress and not the courts. Exempting the states from the twelve year statute of limitations contained in the Quiet Title Act, as H.R. 2484 proposes, will remove the "stumbling blocks" North

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Dakota and other states have encountered in attempting to reach the merits of the disputes with the federal government.

It does not take a detailed examination of the Block case to put into perspective the difficulties and frustrations North Dakota has experienced in this litigation or to visualize how counterproductive the current construction of the limitations statute has been for states in resolving title conflicts with the federal government. It should be noted -- indeed emphasized -- that the problem we are urging this Subcommittee to address here today is the result of a lawsuit which was initially filed in October of 1978.

The issue in that litigation was simply whether the Little Missouri River, which flows through a portion of western North Dakota, was navigable on February 22, 1889, the date North Dakota was admitted into the Union. There was no dispute that if the Little Missouri River was navigable at statehood, that under the Equal Footing Doctrine, title to the bed of the river vested in North Dakota. Similarly, there was no dispute that if the Little Missouri River was not navigable at statehood, then the federal government would own substantial portions of the bed of the river as a riparian landowner. Notwithstanding the relative simplicity of the issues involved in the Block case, after nearly eight years of litigation the question of navigability is still unresolved.

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It is fair to say the issue of navigability remains unresolved today because the Department of Justice, during the entire course of this litigation, has chosen to use the statute of limitations embodied in the Quiet Title Act as an instrument to deny North Dakota the right to have its claim heard on the merits. Regrettably, the holding of the Supreme Court in Block upheld the position of the Department of Justice. In reaching the decision, the Court stated that if North Dakota's suit was barred by the statute of limitations, the courts below had no jurisdiction to inquire into the merits. Since the lower courts made no findings as to the date on which North Dakota's suit accrued, the Court remanded the case back to the Federal District Court for further proceedings.

On remand, the district court conducted a second hearing and ruled that the statute of limitations contained in the Quiet Title Act compelled dismissal of North Dakota's suit only as to thirteen specific tracts of the bed of the Little Missouri River. As for all other portions of the river at issue, the district court quieted title in the State of North Dakota and re-instated its earlier judgment declaring the Little Missouri River to be a navigable river for the purposes of determining ownership.

Once again, however, the federal government has filed an appeal with the United States Court of Appeals for the Eighth Circuit. The federal government contends that the district court erred in determining that the statute of limitations does not entirely bar North

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Dakota's suit; and, further, that the district court erred in finding the Little Missouri River to be navigable at the time of statehood. If the Circuit Court of Appeals affirms the decision of the district court, the issue of navigability will finally be resolved, subject, of course, to review by the Supreme Court.

On the other hand, if the Circuit Court of Appeals rules that North Dakota is time barred in bringing its suit, the issue of navigability and ultimately ownership of the bed of the Little Missouri river will remain unresolved. This is so because the Supreme Court specifically stated that, even if the United States obtains a dismissal on statute of limitations grounds, the title dispute will remain unresolved unless the federal government takes the step of initiating the quiet title action itself. Consequently, the result may well be that after nearly eight years of litigation nothing will have been determined except that North Dakota does not have the right to be a plaintiff in this matter. The stalemate and frustrations that North Dakota has encountered may therefore continue unless the federal government takes the unlikely step of initiating the quiet title action itself or unless corrective legislation is adopted.

As the stalemate continues so does the uncertainty as to ownership of the riverbed. This causes considerable confusion, particularly with regard to mineral exploration and development. Developers will be forced to continue obtaining oil and gas leases from both the state and the federal government. This dual leasing is

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necessary to assure that all potential owners are under lease and must continue until ownership of the river is finally resolved.

It doesn't take much of an imagination to realize that dual leasing reduces the value of leases and in some situations actually discourages leasing completely. I am aware of at least one situation where a developer has expressed interest in leasing tracts of the Little Missouri River from the State of North Dakota. The developer paid the application fee to have the tracts offered for lease but after learning that the question of ownership was still unresolved, withdrew the applications. The tracts to date remain unleased.

While this is just an isolated situation, based on the many telephone inquiries we have received concerning the status of the Little Missouri River litigation, we believe most developers are aware of the title problems of the river and have refrained from submitting applications for lease. Oil and gas developers are understandably not anxious to lease and explore properties on which the issue of title may never be resolved. Those developers who apply for and bid on tracts underlying the Little Missouri River must be willing to take a risk. The risk is that if they are unsuccessful in acquiring a lease from both the state and the federal government the bonus price they pay to secure a lease may be lost.

In the event leases are taken, the confusion is further compounded once drilling and production occurs. Before revenues

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can be dispersed, ownership must be settled. Accordingly, there are nearly thirty oil and gas wells currently producing in the State of North Dakota for which revenues attributable to the acreage under the Little Missouri River have been suspended. While an accounting for the revenue in those suspense funds has never been conducted, it seems likely that the proceeds could exceed a million dollars. To make matters worse, suspense funds are normally held without obligation to pay interest. Oil and gas developers, therefore, utilize these monies without cost and will continue to do so until the question of ownership is finally resolved. Surely the public interest is not served when oil and gas developers are afforded the opportunity to avoid dispersing revenues to the persons and entities that are rightfully entitled to them because North Dakota is prevented from adjudicating this matter on the merits.

Having pointed out the difficulties, frustrations and confusion that the Block decision has caused in North Dakota, I think it's fair to say that North Dakota is not in a unique situation. Many other states will, if they have not already, experience the problems North Dakota has faced over the past eight years. The need for Congress to perform corrective surgery on the Quiet Title Act is, therefore, not limited to North Dakota. I am hopeful, however, that by noting for you the experiences of North Dakota, the broader implications of the Block decision may be more evident.

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In my view, exempting states from the statute of limitations -- and allowing the states access to the federal judiciary to resolve state/federal title controversies -- is vitally important to orderly management and utilization of public lands and the natural resources thereon. Since both the federal government and the states share in the responsibility for orderly management and development of public lands, it is in the interest of both parties to eliminate confusion and resolve these title controversies.

We believe that the amendment to the Quiet Title Act as set forth in H.R. 2484 provides the remedy needed to promptly and finally resolve title disputes and once again bring about orderly development and management of public land. On behalf of the State of North Dakota, I, therefore, urge your support.

Mr. BERMAN. Rowena Rogers, member of the Board of Land Commissioners.

Ms. ROGERS. Mr. Chairman, I am Rowena Rogers, president of Colorado Board of Land Commissioners. At this time I am representing the Western State Land Commissioners Association.

The association is composed of the land managers of 21 States which range from Minnesota to Hawaii and from Alaska to Louisiana. The bond that unites us is our principal land management concern: trusteeship of those lands which by congressional mandate are dedicated to public education. The archetype of these mandates is found in the Northwest Ordinance of 1807, the ordinance which gave birth to the great land grant universities of Ohio and its neighboring States.

Subsequent to passage of the Northwest Ordinance all States except Texas and Hawaii received land grants to support their school systems. In most of the central States these land grants have been absorbed even as has the public domain, but in the West they remain a valuable source of school support, tangible proof of the wisdom of earlier lawmakers who placed in the several enabling acts the mandate, expanded upon in the State constitutions, that certain sections in each State shall be managed for the support of the common schools.

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Most of the testimony you have heard or will hear today is from professionals learned in law. All I can tell you about is the problems faced by the hands-on administrators of the granted lands in these 21 States, problems which have led to repeated and unanimous support for the amendment under discussion. I also can tell you about the chagrin that has been forced upon us by the suspicion that our Government could care less about equity and fair play in its relationship with the States.

I have here a map of Wyoming's State trust lands.

The blue squares on the map vividly illustrate why State land patterns are described as checkerboarded. The Colorado pattern is similar. Think of the Western half of both of these States, Colorado and Wyoming, as being predominately public domain. And the eastern half as private land. And think, as I do sometimes, of Thomas Jefferson instructing his land officers to go out there and measure off the Louisiana Purchase in square miles.

The fantastic thing is that by and large that mission has been accomplished. But it has been accomplished and accomplished with workable results.

My mother's father was a Government surveyor in northern Colorado, what later became Rocky Mountain National Park. He was a Quaker and none of his survey lines are suspect.

My own father was an outfitter with the Harvy Weed survey team in Montana. He wasn't a Quaker, and it probably is just as well that the only lines he was responsible for were attached to mules.

There are a lot of tall tales out West about the men who did the surveys and about the terrain they were supposed to have carried their chains across, but in fact, it is amazing that more horrendous surveys have not been found. It also is fortunate for today's land administrators, because most of our Excedrin headaches are related to challenges about where on the ground those lines and meridians are supposed to be, or to dealing with monuments which may not be where they first were located, or to seeking solutions for problems caused when rights have been granted third parties by the wrong agency for the wrong lands.

State land management agencies are small, they operate under jealous appropriation processes. And they are committed to returning the greatest possible amount to the schools. Our office has only 28 employees, including the commissioners. We have 10,000 leases outstanding on the blue squares you would see on the Colorado map. We have an operation allowance of about 30 cents an acre, and no prospect of more while the economy of our State is strained.

There is no leeway, either for us or for our peers in other States, to engage in a frantic hunt for possible outstanding sources of litigation with the Federal Government. Neither is there any merit in the prospect of squandering dollars needed for education on such a speculative venture.

Furthermore, there is no need to go out and look for trouble when given time enough it will walk right into our offices. Typically title problems are unearthed by third parties whose leasehold or other rights are affected.

For instance in southwestern Colorado—where Mr. Burford talked about cadastral surveys and how far behind the Bureau is

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and how expensive the surveys are. We thought we had an agreement with the Federal Land Management in one of these negotiations that we supposedly can work out.

We shake hands with them and agree we will do it this way. Well, we had an agreement that pending appropriations to complete the surveys, sections 16 and 36 would be accorded the status intended by Congress. For years we have issued leases on those properties.

Along comes a smart gold miner who makes a strike and decides it will cost him less to claimstake the land as public domain than it does to lease from the State and pay royalties. The State is stuck. That land now is considered public domain. The entire public sector has lost and there is no avenue of relief for the State schools.

In Wyoming the Powder River Basin is being resurveyed. A row of section lines were found to be 1,700 feet off. That is oil country up there, known geological structure country by anyone's definition.

What happens when, as it surely will, an oil well that for 15 years that has been paying royalties to the State is found to be on the public domain? That is easy to answer, the Federal agency has access to the courts to recover what could be a large royalty-plus-interest claim.

Reverse the situation. Can the State exercise the same rights; will the Federal Government satisfy our State claim unless it has to? How can these problems be settled fairly without equal access to the courts by both sides?

In Colorado we found three producing Federal leases on sections for which we are entitled to in lieu selections. Selections are based on equivalent values. The equivalent value on these oil properties is held to be the present depleted value of the resource. Without judicial recourse what protection is there for the interest which Congress created?

I have listened today to questions about what is going to happen to wildlife preserves, concerns about security and tenure which—the Feds don't want to risk losing.

We have lots of State lands which are checkerboarded within wildlife preserves which we lease to the Federal Government and they don't have any problem with the tenure on those reserves.

And I don't see how their tenure, how their security is any better when they have a wildlife preserve on land they don't have any right to, either by lease or exchange or any negotiation with the States, why is that any better tenure then if they find out it is our land and make a deal with us?

These negotiations can be consumated to everyone's benefit.

I won't go on further with small illustrations of the problems which frustrate us. Few of them are earthshaking, and sophists easily can gloss the dollar consequences as long as mineral revenues are shared with the States. But what is inexcusably and fundamentally troubling is the disregard for equity on the Federal side.

When we as a State are involved in ancient land ownership disputes with private owners we go to court because these issues need to be settled. We frequently lose. The law may support the State,

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but judges are concerned with equity, with fair play. And it seems to us that that burden of equity lies heaviest on the strongest; that our sovereign Government has the highest duty to be fair in its dealings with its member States.

This statute of limitations exemption is not a major policy decision in land management. It is a major symbolic decision as to the relationship between the Federal Government and the States.

Thank you.

[The statement of Rowena Rogers follows:]

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STATEMENT OF ROWENA ROGERS

LANDS COMMISSIONER, STATE OF COLORADO

ON BEHALF OF THE WESTERN STATES LAND

COMMISSIONERS ASSOCIATION

BEFORE THE SUBCOMMITTEE ON

ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS,

COMMITTEE ON THE JUDICIARY,

HOUSE OF REPRESENTATIVES

ON H.R. 2484

TO EXEMPT STATES FROM THE STATUTES OF LIMITATIONS

APPLICABLE TO QUIET TITLE ACTIONS

AGAINST THE UNITED STATES

MARCH 5, 1986

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STATEMENT OF ROWENA ROGERS

Mr. Chairman, members of the committee,

I am Rowena Rogers, President of the Colorado Board of Land Commissioners, representing at this time the Western State Land Commissioners Association. The Association is composed of the land managers of twenty-one states which range from Minnesota to Hawaii and from Alaska to Louisiana. The bond that unites us is our principal land management concern: trusteeship of those lands which by Congressional mandate are dedicated to public education. The archetype of these mandates is found in the North West Ordinance of 1807, the ordinance which gave birth to the great land grant universities of Ohio and its neighboring states.

Subsequent to passage of the Northwest Ordinance all states except Texas and Hawaii received land grants to support their school systems. In most of the central states these land grants have been absorbed even as has the public domain, but in the West they remain a valuable source of school support, tangible proof of the wisdom of earlier lawmakers who placed in the several enabling acts the mandate, expandrd upon in the state constitutions, that certain sections in each state shall be managed for the support of the common schools.

Most of the testimony you have heard or will hear today is from professionals learned in law. All I can tell you about is the problems faced by the hands-on administrators of the granted

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lands in these twenty-one states,problems which have led to repeated and unanimous support for the amendment under discussion. I also can tell you about the chagrin that has been forced upon us by the suspicion that our government could care less about equity and fair play in its relationship with the states.

I have here a map of Wyoming's state trust lands. ^ The blue squares vividly illustrate why state land patterns are described as checker-board. In Colorado the pattern is similar: think of the west half as being predominantly public domain and the east half as private land. And think, as I do sometimes, of Thomas Jefferson instructing his land officers to go out there and measure off the Louisiana purchase in square miles.

The fantastic thing is that by and large that mission has been accomplished at all and accomplished with workable results. My mother's father was a government surveyor in northern Colorado, what later became Rocky Mountain National Park. He was a Quaker and none of his survey lines are suspect. My own father was an outfitter with the Harvey Weed survey team in Montana. He wasn't a Quaker and it probably is just as well that the only lines he was responsible for were attached to mules. There are a lot of tall tales out West about the men who did the surveys and about the terrain they were supposed to have carried their chains across, but in fact it is amazing that more horrendous survey

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errors haven't not been found. It also is fortunate for today's land administrators, because most of our excedrin headaches are related to challenges about where on the ground those lines and meridians are supposed to be, or to dealing with monuments which may not be where they first were located, or to seeking solutions for problems caused when rights have been granted third parties by the wrong agency for the wrong lands.

State land management agencies are small, they operate under jealous appropriation processes, and they are committed to returning the greatest possible amount to the schools. Our office has only twenty-nine employees, including the commissioners. We have ten thousand leases outstanding on the blue and the pale blue squares you would see on a Colorado map. We have an operating allowance of about 30 cents an acre and no prospect of more while the economy in our state is strained. There is no leeway, either for us or for our peers in other states, to engage in a frantic hunt for possible outstanding sources of litigation with the federal government. Neither is there merit in the prospect of squandering dollars needed for education on such a speculative venture.

Furthermore there is no need to go out and look for trouble when given time enough it will walk into our offices. Typically title problems are unearthed by third parties whose leasehold or other rights are affected. For instance in southwestern Colorado,

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where cadastral surveys cost a fortune, we thought we had an agreement with the federal land managers that, pending appropriations to complete the surveys, sections 16 and 36 would be accorded the status intended by Congress. For years we have issued leases on those properties. Along comes a smart gold miner who makes a strike and decides it will cost him less to claimstake the strike as public domain than it does to lease from the state and pay royalties. The state is stuck. The entire public sector loses and there is no avenue of relief for the state schools.

In Wyoming the Powder River Basin is being resurveyed. A row of section lines was found to be 1700 feet off. That's oil country up there, Known Geological Structure country by anyone's definition. What happens when, as it surely will, an oil well that for fifteen years has been paying royalties to the state is found to be on public domain? Easy answer: the federal agency has access to the courts to recover what could be a large royalty-plus-interest claim. Reverse the situation. Can the state exercise the same rights? Will the federal government satisfy a state claim unless it has to? How can these problems be settled fairly without equal access to the courts by both sides? In Colorado we found three producing federal leases on sections for which we are entitled to in lieu selections. Selections are based on equivalent values. The equivalent value on these oil properties is held to be the present depleted value

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of the resource. Without judicial recourse what protection is there for the school interest which Congress created?

I won't further belabor small illustrations of the problems which frustrate us. Few of them are earthshaking, and sophists easily can gloss over the dollar consequences as long as mineral revenues are shared with the states, but what is inexcusably and fundamentally troubling is the disregard for equity on the federal side. When we as a state are involved in ancient land ownership disputes with private owners we go to court because the issues need to be settled. We frequently lose. The law may support the state but judges are concerned with equity, with fair play. And it seems to us that the burden of equity lies heaviest on the strongest; that our sovereign government has the highest duty to be fair in its dealings with its member states. This statute of limitations exemption is not a major policy decision in land management. It is a major symbolic decision as to the relationship between the federal government and the states.

Mr. BERMAN. Thank you very much.

The final witness on the panel is an old friend of mine, I worked with in my days in the legislature, and who very effectively represents California's interests in the attorney general's office, Jan Stevens.

Mr. STEVENS. Thank you, Mr. Chairman. I would like to express my appreciation and that of Attorney General Van de Kamp for your sponsorship of this measure and for the efforts which you are making to resolve this and a number of other problems for California. It has always been a pleasure to work with you.

Our formal statements have been filed for the record. I will make no effort to duplicate the concerns that have been so eloquently voiced by the preceding panelists. I would like to touch very briefly on a couple of the issues which were raised in the testimony presented by the Government agencies, because it does concern us.

We have discussed sovereignty as a two-way street. The principles behind a sovereign's exemption from limitations bars are good ones. We attempted in the submerged lands cases to raise the issue of statute of limitations or laches against the United States on the grounds that States had happily been proceeding to lease offshore California and Texas and Louisiana in the 1930's and 1940's. The assertion of a Federal interest was an unpleasant surprise to us; one that impaired our development plans and interests. And the Supreme Court gave us quite a lecture in *U.S.* v. *California,* to the

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effect that no sovereign's interest should suffer because of the negligence and inattention of its officers or employees; that the interests of the people should certainly not suffer simply because the Federal Government had not attentively safeguarded its interests in the offshore waters.

Well, the principle is not a new one, even if we lost that argument. And it is one which is inherent in the common law since the founding of the Republic. Every case that we have looked at practically has indicated that the statute of limitations is a public policy about the privilege to litigate. And as Justice Holmes said, it is revolting to attempt to place this immunity, which exists only because of some slight technical defect, on the same footing as those based on fundamental substantive grounds. Certainly that is the case here.

The reasons which permit the United States to sue at will, at any time it wishes, when it deems the public interest demands it apply equally to States as sovereigns. But I think that issue has been pretty well hashed over so I will get the two other issues which seem to concern the Federal agencies most.

The first one was one of workload, the fact that there is a large universe of unknown controversies lingering somewhere out there, which would suddenly descend if the States were exempted from the statute of limitations.

We have made an effort to try and quantify this. And I think that General Spaeth and Mr. Jones have addressed it well.

I can only add that when the States initially were surprised at the contention that the statute applied to them, 6 years after the statute was enacted in 1972—at that time the Federal Government was only able to cite three cases which had been brought by States in that 6-year period. And I think that the reason there were so few cases was that the States did not believe the statute hung over their heads like a Sword of Damocles to require them to file suit in order to protect their people's interest.

In 1984, when the first hearing on a similar measure came up, we polled all of the States and 40 States replied, 6 of which reported that they had pending controversies with the Federal Government. The total number of such controversies was 11.

Even more interesting was the nature of the workload—the "floodgate of litigation" threatened in those 11 cases. The majority of the cases appeared to involve whether or not the statute of limitations was applicable. In other words, we were spending large amounts of money and large amounts of time litigating not who owned the property, but whether a State was on notice in 1896 or in 1930 or in 1851, if you will, as to whether there was a Federal claim.

And I would submit that this is the most nonproductive and wasteful kind of litigation to which we could possibly devote our resources. If, as the Department of Justice said we should be only pursuing "significant matters," I suggest that the merits of property disputes are much more significant than whether or not the 12 years have elapsed at some ancient time.

The final observation that I had, was over the nature of land commissioners, and I think that Mrs. Rogers is an outstanding one.

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In our experience in representing such agencies and working with them, they are not litigious by nature. Some are not even fond of lawyers. Their emphasis is on the resolution of matters.

As their counsel, with a statute of this nature ticking away our only recourse in a doubtful case is to advise that suit be filed, and the matter be turned over to litigators simply to protect the interest of the public. This seems extremely nonproductive.

The vast majority of cases are susceptible to resolution. And those that aren't as Congress decided in 1972, really belong before the courts and not in the form of private bills or petitions to the administration.

Finally, there is a threat mentioned of wildlife refuges and things of that nature being menaced because they are often in submerged lands and wetlands. I think it is a nonexistent threat; not only because, as Mrs. Rogers testified, these things are worked out—indeed, in California 18 square miles of San Franciso Bay is currently under lease to the Federal Government for wildlife refuge purposes but also because we think the Federal Goverment has ample authority under the property clause—and the boundary waters canoe case *Minnestoa* v. *U.S.*, 660 F.2d 895 cert. denied 455 U.S. 1007, gives evidence of that—to impose restrictions upon the use of navigable waters in order to protect Federal wildlife refuges parks and other resevations. Not only does the willingness to work things out exists, but also Federal authority to protect endangered lands appears to exist as well. So we believe this again, is a nonissue.

In short we think that the failure to enact this bill will clearly lead to much more litigation than its enactment, and that litigation will be much less productive and substantive than that which ensue if we had a chance to resolve on their merits those few matters that can't be resolved elsewhere.

Thank you.

[The statement filed by Jan Stevens in behalf of John K. Van DeCamp, Attorney General of the State of California is as follows:]

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AMENDMENT OF THE FEDERAL QUIET TITLE ACT

Summary of California Attorney General John K. Van de Kamp's Statement in Support of H.R. 2484

The U. S. Supreme Court held in Block v. North Dakota, 461 U.S. 273 (1983), that the 12-year statute of limitations applicable to quiet title actions against the federal government applies to suits brought by states as well as private parties. This holding has caused serious concern for the following reasons:

1. It jeopardizes the settlement of longstanding controversies between states and the federal government.

2. It runs contrary to the federal administration's announced desire to work with the states in a spirit of cooperative federalism.

3. It seriously jeopardizes the orderly administration of lands subject to title disputes between the states and the federal government. The Supreme Court's holding does nothing to resolve these often longstanding controversies. It merely presents a procedural block to their effective resolution. Consequently, lessees of disputed property who are in doubt as to their obligations may be subjected to duplicative claims to rent and royalties from both sovereigns.

4. It contravenes the long-accepted principle that statutes of limitations do not run against the claims of sovereigns, because the people's rights should not suffer by the inattention of governmental officials.

Nothing in the legislative history of the Federal Quiet Title Act indicates that the Congress contemplated the applicability of the statute of limitations to sovereign states as well as to private litigants.

Finally nothing in the 14-year history of the Federal Quiet Title Act indicates that an exemption for the claims of sovereign states would release a "flood of litigation" over stale claims.

An exemption from the statute of limitations for sovereign states for the claims of the states is necessary and desirable. Such legislation (in the form of S. 1617 and H.R. 2484) is supported by the National and Western associations of governors and state legislators, the attorneys general of 36 states, the National Association of Attorneys General, the Conference of Western Attorneys General, the Western State Land Commissioners Association, and the Interstate Oil Compact Commission.

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STATEMENT OF CALIFORNIA ATTORNEY GENERAL
JOHN K. VAN DE KAMP IN SUPPORT OF H.R. 2484

In the recent case of Block v. North Dakota (1983) 461 U.S. 273, the Supreme Court held that the 12-year statute of limitations in the federal Quiet Title Act applied to the claims of sovereign states as well as those of private persons. As a result, a state is precluded from filing quiet title suits against the federal government if it "knew or should have known" of the claim for more than 12 years.

This decision has not resulted in the clarification of disputes over titles between the states and the federal government. On the contrary, it has exacerbated such controversies. It has hampered state and federal leasing programs and fostered a crazyquilt of judicial holdings on what comprises adequate nature of a federal claim. Finally, it will, unless resolved by Congress, compel states to file literally hundreds of new cases within the next few years in order to avoid being barred by the statute.

The 12-year statute, incorporated in the Act at the request of the United States Department of Justice to forestall a "flood of litigation," received no apparent attention from states at the time the Act was passed and adopted in 1972. This inattention was perhaps understandable because under established principles of common law, statutes of repose will not bar the claim of a sovereign. A few years earlier, that same court had observed:

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> "The Government, which holds its interests here as elsewhere in trust for all the people, is not deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act." (United States v. California (1947) 332 U.S. 19, 39-40.)

Application of the statute of limitations to claims of states is particularly inappropriate in light of the typical facts surrounding such claims. Each state holds the lands under its navigable waters (tide and submerged lands and navigable lakes and rivers) in trust for its people by virtue of the federal constitution, not by congressional grace. (Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co. (1977) 429 U.S. 363.) The 13 original colonies succeeded to the title of King George in such lands (Martin v. Waddell (1842) 41 U.S. (16 Pet.) 367), and under the equal footing doctrine, states admitted later acquired such lands on admission. (Pollard's Lessee v. Hagan (1845) 44 U.S. (3 How.) 212.)

Once quiet title suits became available under the 1972 Act, surprised states found not only that the federal government was asserting the statute as a bar in such suits

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but that it was contending that hapless states "knew or should have known" of the federal claim when they acquired such lands on statehood. Thus, Utah was told that it should have known of claims to Utah Lake when it became a state in 1896. California was told that an 1899 federal-state reclamation project on the Yuba River should have put it on notice of federal claims on that date. North Dakota, in the Block case, was charged that it had notice of the federal claim in 1955. Such notice in part, the United States claimed, came from Bureau of Land Management filings in neighboring Montana. The "Catch-22" in this argument is, of course, that even if a state knew or should have known of a federal claim at that time, suit would have been impossible because Congress did not waive sovereign immunity until its adoption of the Quiet Title Act of 1972.

The sovereign nature of lands underlying a state's navigable waters carries with it implications not discussed by the majority in Block. As 28 amici states pointed out, most controversies with the federal government over land involve the claims of private persons. In those infrequent but important cases in which a state sues to protect its sovereign title to the bed of a navigable water, the situation is far different. These lands were acquired by states as an incident of their sovereignty. (Pollard's Lessee v. Hagan, supra, 44 U.S. 212; State Land Board v. Corvallis San & Gravel Co., supra, 429 U.S. at 370.) Unlike federal lands, they are held

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in trust for the people within their borders. (Iilinois Central Railroad Company v. Illinois (1892) 146 U.S. 387; Shively v. Bowlby (1893) 152 U.S. 1.) Severe restrictions are imposed on their alienation and on their use for other than trust purposes (e.g., commerce, navigation, fishing and environmental uses). (See Illinois Central Railroad Company v. Illinois, supra; Marks v. Whitney (1971) 6 Cal.3d 251, 491 P.2d 379.)

A similar situation exists with respect to school lands, granted to the states in trust, to ensure that adequate resources would be available for the public schools. This school lands grant has been characterized as a "solemn agreement" between states and the federal government, under which states waived their claim to the public domain in return for a representative portion of the federal lands retained. (Andrus v. Utah (1980) 446 U.S. 500, 507.)

In the Block case, the court made it clear that even though the United States may obtain a dismissal on statute of limitations grounds, the title dispute will remain unresolved. In such cases, Justice White observed:

> "Nothing prevents the claimant from continuing to assert his title, in hope of inducing the United States to file its own quiet title suit, in which the matter would finally be put to rest on its merits." (Id., 75 L.Ed. at 856-857.)

Thus, notwithstanding the decision of two lower federal courts that the Little Missouri River was navigable,

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the State of North Dakota was precluded from obtaining any determination of this question on the merits.

The court's conclusion, contrary to the states' widespread assumptions and a number of district court decisions, raises a dilemma for the orderly regulation and development of lands. If, as Justice White observed, underlying title disputes remain unresolved, the states' only alternatives will be to provoke the federal government into suing by demanding rents and royalties from federal lessees and generally conducting acts inconsistent with federal ownership, or to seek private legislation, inundating Congress with multiple demands that should be made elsewhere.

Both the Conference of Western Attorneys General and the National Association of Attorneys General, immediately recognizing the problem, called for ameliorative legislation. They have been joined by the National Governors Association, the National and Western Conferences of State Legislators, the Conference of Western States Land Commissioners, and other groups with an interest in the orderly development of public lands. The Block decision upset the federal balance by precluding resolution of vital public land issues on the merits. The court recognized the problems that its decision would cause, and invited a legislative solution. Congressman Berman's H.R. 2484 and its companion measure, S. 1617, would restore the balance by giving the states the same standing now enjoyed by the federal government to seek judicial resolution of title disputes. Federalism is not a one-way street.

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Mr. BERMAN. Thank you all very much. I thought you did a fine a job of convincing me that the bill is a good one. And since it is my bill that is a good thing.

By the way, it doesn't automatically follow that because it is my bill that I am convinced it is a good one. I do appreciate the testimony and I think it was very helpful to me in getting a more real sense of the meaning of this issue.

I have a couple of questions, but first let me yield to minority counsel who has a very specific question he wanted to ask.

Mr. RICHARDSON. Just one question to General Spaeth, with regard to the case you had outlined concerning the Little Missouri River.

In a case where a lessee is uncertain as to where to make payment, for example, to the State or Federal Government and it goes into an escrow account, could a statutory interpleader action be brought demanding that such determination be made?

Mr. SPAETH. Under the rules of interpleader, though, you have to be able join all necessary and indispensible parties. And we can't join the United States because of this immunity problem, and thus we are stuck without any recourse in that situation.

Mr. RICHARDSON. Thank you, Mr. Berman.

Mr. BERMAN. The Justice Department raised this issue of their effort to try and get information from the States about disputed properties, and that they haven't really been able to.

No. 1, is that accurate?

And second, if it is accurate, is part of the difficulty of being in conflict with a party that is saying at the same time as you are trying to create a judicial avenue to pursue the merits of these claims that are in conflict, you don't particularly want them building their case against such an eventuality?

Mr. SPAETH. We are all somewhat amused to hear them talk about that again here today. We know exactly what our lands are. We have the school trust lands, and the submerged lands, and it is easy for us to identify what our lands are. But what we can't identify is where the Federal Government may, because of some action that only they would know about in 1906, lays claim to something.

So, the itemization if it is to exist, is going to have to come from the Federal Government because we don't know where they are going to hit us and lay claim to something that, at least under general principles of property law, belongs to us.

And that is where the problem comes. We just don't know where the Federal Government is coming from on this. And they have made some pretty extraordinary claims about what constitutes an adverse position by them, or where they are laying claim to something at least most people assume is State land.

Mr. JONES. Yes, Congressman, I think that there is a misapprehension as to how these claims will arise. I think it will be more of a case that the State will have certain property that it thinks it owns, like a river bed or a lake bed, or a certain portion of it. And when some activity is carried on by the State with respect to that land there may be a Federal claim asserted.

Mr. BERMAN. Like the royalties situation that you referred to earlier?

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Mr. JONES. Right. And so we can't identify, as General Spaeth pointed out, where the iron is going to strike. There may be some instances where the Federal Government is in possession of property that the State lays claim to. But in a lot of the cases it is going to be where the State is confident that it owns the property and then some Federal claim is going to be asserted. The mischief is that even if the Federal claim is specious and groundless, when the Federal Government asserts that claim and you go into court and try to show the groundlessness of the claim, the court is going to be inclined to say, "Well, maybe their claim is no good, but you can't litigate it because the 12-year statute ran, say, on statehood, or some other early time that would preclude you from ever litigating."

Mr. BERMAN. Have you had a chance to look over Congressman Seiberling's statement? I take it——

No; well, I will make sure you get a copy.

I do think, in the course of our moving this, that this is going to be something that we deal with. And let me just read a little bit of his comment here:

> If additional information were to be developed we would be in a better position to gauge the potential impact of H.R. 2484 on Federal land management. Such further information should include the bearing of the bill on important matters such as Federal reserve to water rights, because the courts have held that the Federal Government's reservation of lands, such as national forests, from the public domain also was a reservation of the waters necessary for the accomplishment of the purpose for which the lands themselves were reserved.
>
> Determining what amounts of waters have thus been reserved by the Federal Government is a quantification often difficult at best, and it would seem impossible in the absence of certainty as to the nature and the extent of the Federal interests in the affected lands, regardless of the fact that the Quiet Title Act's waiver of sovereign immunity does not extend to water rights as such.

Mr. JONES. Congressman, that concern would have no application in my own State, and I doubt that it would in any of the others. We are presently working on an adjudication of the Snake River Basin with the Forest Service and BLM. Question of water rights are worked out in adjudication proceedings, not in Quiet Title actions.

If there is any conflicting claim, I am not aware of it. And even if there was the amount of water affected would be so miniscule that it would make any difference.

The Forest Service is primarily concerned about in-stream flows in those adjudication proceedings. And that would be tied, not so much to the acreage that they owned, but the general overall nature of the terrain, the wildlife and esthetic concerns that they may be trying to protect. I don't think it would make any difference at all. And again, water questions would not be handled in quiet title actions.

Mr. SPAETH. It is not an issue at all in North Dakota. I can't think of any.

I was just remembering in my mind the pattern of Federal ownership, I don't think there is any water issue whatsoever that could come up in my State.

Mr. STEVENS. If I may add, it seems to be almost apples and oranges, in a sense, because the ability to get a basinwide adjudication already exists under the McCaren Act. It can be done. Wheth-

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er or not the waters that are adjudicated include those under Federal reserve water rights, is really something that would have to be resolved within that context.

And if there is a question as to whether or not some of that land is, indeed, owned by the Federal Government, it is going to come up in the adjudication even if the State is precluded by the statute of limitations from quieting title to that land.

Mr. BERMAN. If there aren't questions from counsel, then once again we appreciate very much your making yourselves available for the hearing.

And we will declare the hearing adjourned.

Mr. SPAETH. Thank you, Mr. Chairman, for scheduling this hearing to accommodate us.

[Whereupon, at 2:55 p.m., the hearing adjourned.]

[The following material was submitted for the record:]

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DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

March 17 1986

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As you requested, here are our views on H.R. 2484, a bill "To amend title 28, United States Code, to exempt States from the statute of limitations applicable to quiet title actions against the United States.

The Department of Agriculture recommends that the bill not be enacted unless amended as recommended herein.

This legislation would amend the Quiet Title Act (86 Stat. 1176: 28 U.S.C. 2409a) to exempt the States from the 12-year statute of limitation applicable to quiet title actions against the United States. The Quiet Title Act was intended by Congress to provide a limited waiver of sovereign immunity in quiet title actions. Care was taken to prevent assertion of stale claims by providing the 12-year statute of limitation. A May 1983 Supreme Court decision (Block v. North Dakota, 461 U.S. 273) verified that the Quiet Title Act provides the exclusive authority under which States may judicially challenge the title of the United States to real property and that the statute of limitation is applicable to a State.

In 1984 testimony before the Subcommittee on Administrative Law and Governmental Relations, the Department of Justice concluded that in Federal-State relationships ordinary quiet title actions over real property are not the principal problem posed by the 12-year statute of limitation. This Department's experience substantiates the Department of Justice's conclusion. We have had few, if any, real property title disputes with the States since enactment of the Quiet Title Act. On the other hand, because of doubt about the navigability or non-navigability of certain bodies of water, there is an ongoing effort by the Forest Service and certain States to establish ownership of certain submerged lands which are a part of the National Forest System.

Since the Supreme Court decision that the Quiet Title Act provides the exclusive remedy by which the States can challenge title of the United States, other judicial remedies for prosecuting lawsuits against the Federal Government are barred. Thus, the Act has had the effect of narrowing opportunity for resolving title to submerged lands. This is partly because of the contention of the United States that State claims usually accrued at the time a particular State was admitted to the Union, which in virtually all cases is more than 12 years prior to enactment of the Quiet Title Act. We are hopeful that the discussions between the Federal Government and several Western State governments, initiated by the introduction of this bill and which seek an administrative rather than legislative solution to the problem of quiet title actions, will be successful and that the solution will include resolution of the navigability/non-navigability issue. We have been consulted by the Department of Justice on these discussions and have made our views known. We believe that negotiated resolution of this issue is to be preferred over the broad waiver proposed by H.R. 2484 and thus urge that the bill not be enacted.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Richard E. Lyng

Richard E. Lyng
Secretary

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Honorable John F. Seiberling

Statement on H.R. 2484

Before the Subcommittee on

Administrative Law and Governmental Relations

Mr. Chairman, I appreciate having the opportunity to submit for inclusion in the hearing record a statement on H.R. 2484, a bill to exempt the several States from the present 12-year statute of limitations for actions against the United States under the Quiet Title Act of 1972.

I think it is clear that the rigid application of the 12-year limit may indeed sometimes put responsible State officials in the anomalous and undesirable "catch 22" position of being obliged to act as public trustees with regard to State claims to Federally-held lands they believe are State property but of being unable to obtain a decision on the merit of such claims. This apparent dilemma seems most acute where the State could be considered to have known of a Federal claim more than 12 years before the Quiet Title Act itself was enacted--because, in such cases, if the 12 year limitation is held to have begun to run when the State knew of the Federal claim, the effect is that the State's ability to bring its suit expired before the United States had consented to be sued.

However, enactment of a bill like H.R. 2484 could have a direct and substantial impact on a number of important Federal policies and programs regarding the management of the

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Federally-owned lands and the conservation and development of their renewable and non-renewable resources and the protection of their natural, scientific, cultural, recreational, and other values.

The American people, through their federal government, are the owners of fully one-third of the lands within the national boundaries. Vast portions of these federal lands have been designated for special management in the public interest through inclusion in the National Forest System, National Parks System, National Wildlife Refuge System, National Trails System, National Wild and Scenic Rivers System, and the National Wilderness Preservation System. Each of these systems must be managed in accordance with very specific provisions of law. Other areas are managed by the Bureau of Land Management (part of the Department of Interior) pursuant to the Federal Land Policy and Management Act of 1976, which, inter alia, established that it was national policy that they be "managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use".

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If the federal lands are to be properly managed as required by law, the federal government must be able to devote the necessary resources to these purposes, rather than to litigation over which lands are actually part of the American people's estate.

Based on the testimony on behalf of an identical bill in the 98th Congress (H.R. 3917), I don't think these concerns have been adequately fleshed out. If additional information were to be developed (perhaps by the Committee on Interior and Insular Affairs, which has the most wide-ranging jurisdiction over federally-owned lands and in particular over the public domain), we would be in a better position to gauge the potential impact of H.R. 2484 on federal land management. Such further information should include the bearing of the bill on important matters such as federal reserved water rights--because the courts have held that the federal government's reservation of lands (such as national forests) from the public domain also was a reservation of the waters necessary for the accomplishment of the purpose for which the lands themselves were reserved. Determining what amounts of waters have thus been reserved by the federal government is a quantification often difficult at best, and it would seem nearly impossible in the absence of certainty as to the nature and extent of the federal interests in the affected lands,

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regardless of the fact that the Quiet Title Act's waiver of sovereign immunity does not extend to water rights as such --see 28 U.S.C. 2409a(a).

Unless and until we have better information about the nature and extent of the various State claims to ownership of lands now held by the federal government which might be revived by enactment of H.R. 2484, I believe that it would be unwise to move forward with the bill as it now stands. However, if the Judiciary Committee decides to report this bill, as Chairman of the Interior Subcommittee on Public Lands, I would recommend that the Interior Committee seek sequential referral of H.R. 2484 for the reasons outlined above.

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STATEMENT OF KENNETH CORY,

CONTROLLER, STATE OF CALIFORNIA

FOR THE SUBCOMMITTEE ON

ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS,

COMMITTEE ON THE JUDICIARY,

HOUSE OF REPRESENTATIVES,

ON H.R. 2484

TO EXEMPT STATES FROM THE STATUTES OF LIMITATIONS

APPLICABLE TO QUIET TITLE ACTIONS

AGAINST THE UNITED STATES

MARCH 5, 1986

Mr. Chairman, I am grateful for this opportunity to submit testimony in support of H.R. 2484, "To exempt states from the statutes of limitations applicable to quiet title actions against the United States."

This amendment of the Quiet Title Act, sponsored by my good friend Mr. Berman, deals with a judicially reopened area of conflict between state and federal land administrators. While it may be of more critical importance to those in the West, where

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federal public lands take up so much of our total area, it is important to all states. The bill provides merely an opportunity for the state and federal land administrators to use the federal courts to resolve title disputes. It does not give new life to old disputes which have been resolved.

As Chairman of the California State Lands Commission, responsible for administration of the state's sovereign lands, I have become all to keenly aware of this problem. Inaccurate or incomplete surveys, the wavering of river courses, questions whether a given stream was "navigable" in 1850 or not -- these are examples of the kind of questions that can arise. If there is available a prompt and efficient legal remedy, disputes are short-lived and quickly disposed of by trial or settlement. The lack of a demonstrably clear title in either state cr federal land agency greatly hinders both in dealing with the disputed land and adjoining areas.

In 1972, enactment of the Quiet Title Act provided for the adjudication of both state and private title claims against the federal government. Under that Act, for a decade, we were able to use the courts readily for a resolution of irreconcilable title disputes, regardless of when the dispute arose.

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Later, the Department of Justice changed signals -- the states could be permitted to litigate only those claims which the state "knew or should have known" were in existence for not more than twelve years before the litigation was brought. And indeed, while the Quiet Title Act does contain a limitation of twelve years on claims to be litigated, like other statutory time limitations, it had been thought to be inapplicable to the states as sovereigns. For as you may know, it has been the rule since time immemorial that time limitations do not apply to sovereigns and, under the Constitution, the states are sovereign within their sphere.

That exception to the general rule has a practical base. It would be highly improper if a state administrator, resonsible for the administration of trust lands, and without authority to give those lands away, could accomplish the same purpose by merely looking the other way while they were taken. It seems unreasonable that a state admitted in 1850 should not now be permitted to quiet title to a river bed by litigation because its officials "knew or should have known" that it was navigable in 1850, and its bed conveyed to the state as public lands. And of course, knowledge of such a claim of title was academic in the face of the total lack of any real remedy until 1972, when the Quiet Title Act was passed.

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The Department of Justice carried its technical interpretation of the Quiet Title Act successfully to the Supreme Court. Although the Court did not find a legislative intent to end the traditional immunity of sovereigns, itsustained the department's assertion that this procedural bar included the states although the limitation did not affect the validity of the underlying claim. The Court did, however, note explicitly that the matter was easily remediable by legislative action.

And so we are here. Brilliant though the technical expertise of the Department of Justice lawyers may have been, the practical result is that Congress must provide a basis for resolving these conflicts so the federal or state land administrators can perform their resonsiblities or else title will remain forever in dispute.

The states ask that sense be restored to the statute, as it was before this legalistic exercise began. As I indicated before, that action would create no disputes or revive any settled claims, it would surely avoid the friction between state and federal agencies which is inevitable under the existing situation. It would reduce, not add to, the workload of the state and federal land agencies. It might, of course, shift some of that workload to the Department of Justice, but that transferred cost is hardly a reason for continuing the confusion.

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STATEMENT OF

THE HONORABLE ROBERT W. O'DONNELL

MAJORITY WHIP, PENNSYLVANIA

HOUSE OF REPRESENTATIVES

CHAIR, NATIONAL CONFERENCE OF STATE LEGISLATURES

LAW AND JUSTICE COMMITTEE

SUBMITTED TO THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND

GOVERNMENT RELATIONS

OF THE

HOUSE JUDICIARY COMMITTEE

REGARDING

AMENDMENTS TO THE QUIET TITLE ACT

REQUIRED TO RESOLVE STATE/FEDERAL

LAND DISPUTES

MARCH 5, 1986

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM STATE REPRESENTATIVE ROBERT W. O'DONNELL, FROM PENNSYLVANIA. I SERVE AS MAJORITY WHIP OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES AS WELL AS CHAIR OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES' LAW AND JUSTICE COMMITTEE. NCSL IS THE OFFICIAL REPRESENTATIVE OF THE NATION'S SEVEN THOUSAND STATE LEGISLATORS, AND I SPEAK TODAY ON BEHALF OF NCSL, WHICH HAS ENDORSED H.R. 2484. STATE LEGISLATORS FROM ACROSS THE COUNTRY AT NCSL'S ANNUAL MEETINGS AND STATE-FEDERAL ASSEMBLIES HAVE FOR THE PAST TWO YEARS UNANIMOUSLY ENDORSED LEGISLATION TO AMEND THE FEDERAL QUIET TITLE ACT IN ORDER TO FACILITATE THE ORDERLY JUDICIAL RESOLUTION OF STATE/FEDERAL LAND DISPUTES.

STATE-FEDERAL LAND DISPUTES ARE AN IMPORTANT IF RARELY RAISED INTERGOVERNMENTAL ISSUE. MOST IMPORTANT STATE-FEDERAL LAND TITLE DISPUTES HAVE INVOLVED SUBMERGED LANDS, WHICH MAY CONTAIN SIGNIFICANT MINERAL DEPOSITS OR OTHER VALUABLE RESOURCES, BUT THERE HAVE BEEN OCCASIONAL DISPUTES REGARDING ONSHORE LANDS. BEYOND THEIR ECONOMIC IMPORTANCE, THESE DISPUTES INVOLVE IMPORTANT ISSUES OF STATE SOVEREIGNTY.

THE POSSIBILITY OF UTILIZING JUDICIAL MEANS OF RESOLVING MANY STATE-FEDERAL LAND DISPUTES WAS CUT OFF BY THE U.S. SUPREME COURT DECISION IN BLOCK V. NORTH DAKOTA, 75 L. ED 2D 840 (1983). IN BLOCK, THE COURT HELD THAT THE TWELVE-YEAR

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LIMITATION PERIOD OF THE 1972 QUIET TITLE ACT APPLIED TO STATE CLAIMS. THE NATIONAL CONFERENCE OF STATE LEGISLATURES AND OTHER GROUPS REPRESENTING STATE OFFICIALS ARE NOW URGING THE PASSAGE OF H.R. 2484 TO LIFT THE APPLICATION OF THE QUIET TITLE ACT'S LIMITATIONS ON A STATE'S ABILITY TO ASSERT ITS CLAIMS.

THE QUIET TITLE ACT OF 1972 WAIVED FEDERAL SOVEREIGN IMMUNITY FOR SUITS DISPUTING FEDERAL LAND TITLE CLAIMS. QUIET TITLE ACTIONS WERE SUBSEQUENTLY BROUGHT AGAINST THE FEDERAL GOVERNMENT BY SEVERAL STATES. MANY STATES LITIGATED ON THE THEORY THAT THE ACT'S LIMITATION PERIOD DID NOT RUN AGAINST SOVEREIGN STATES. IN THIS CONNECTION, THE STATES DEPENDED ON THE RULE OF COMMON LAW THAT STATE CLAIMS ARE EXEMPT FROM GENERALLY-WORDED STATUTES OF LIMITATIONS.

ON MAY 3, 1983, HOWEVER, THE U.S. SUPREME COURT IN BLOCK v. NORTH DAKOTA DECIDED THAT THE TWELVE-YEAR LIMITATIONS PERIOD WAS A LIMITATION ON THE FEDERAL CONSENT TO SUIT, AND APPLIES TO STATE CLAIMS. THE EFFECT OF THIS DECISION IS TO LEAVE MANY STATE-FEDERAL LAND DISPUTES WHOLLY UNRESOLVED. IF THE UNITED STATES CAN SUCCESSFULLY DEMONSTRATE THAT A STATE KNEW OR SHOULD HAVE KNOWN ABOUT A FEDERAL CLAIM TWELVE YEARS BEFORE THE SUIT AND FAILED TO CONTEST IT, THE QUIET TITLE ACTION IS TO BE DISMISSED WITHOUT A DETERMINATION ON THE MERITS.

THE BIND IN WHICH THE STATES FIND THEMSELVES IS ILLUSTRATED BY THE FACTS AND HOLDING IN BLOCK.

NORTH DAKOTA FILED SUIT UNDER THE QUIET TITLE ACT AGAINST THE UNITED STATES, CLAIMING TITLE TO THE BED OF THE LITTLE MISSOURI RIVER ON THE GROUNDS THAT THE RIVER WAS NAVIGABLE IN 1899 WHEN NORTH DAKOTA WAS ADMITTED TO THE UNION AND THAT UNDER THE EQUAL-FOOTING DOCTRINE, THE RIVERBED BELONGS TO THE STATE.

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THE UNITED STATES CLAIMED TITLE AS A RIPARIAN LANDOWNER ON A NON-NAVIGABLE RIVER.

THE TRIAL COURT HELD THAT THE TWELVE-YEAR LIMITATION PERIOD OF THE QUIET TITLE ACT DID NOT APPLY TO THE STATES AND ENTERED JUDGMENT IN FAVOR OF THE STATE. THE COURT OF APPEALS AFFIRMED.

THE UNITED STATES SUPREME COURT REVERSED, HOLDING THAT THE TWELVE-YEAR LIMITATION APPLIED TO THE SOVEREIGN STATES BECAUSE IT WAS A LIMITATION ON THE CONSENT TO SUE, NOT A LIMITATION TERMINATING THE CLAIM. THIS MADE INAPPLICABLE THE GENERAL RULE OF STATUTORY CONSTRUCTION THAT A STATUTE OF LIMITATIONS OUGHT NOT TO BE ASSUMED TO APPLY TO SOVEREIGN STATES UNLESS THE STATUTE IS WORDED TO SPECIFICALLY APPLY TO THE STATES. THE SUPREME COURT HELD THAT GIVEN THE HISTORY OF THE SOVEREIGN IMMUNITY OF THE UNITED STATES, AN EXCEPTION THEREFROM CANNOT BE LIGHTLY ASSUMED OR LIBERALLY CONSTRUED. THE COURT READ THE LEGISLATIVE HISTORY OF THE QUIET TITLE ACT TO INDICATE NO SPECIAL INTENT TO EXEMPT THE STATES FROM OPERATION OF THE QUIET TITLE ACT'S LIMITATION ON THE WAIVER OF THE FEDERAL IMMUNITY. THE COURT FOUND NO TENTH AMENDMENT OR EQUAL FOOTING DOCTRINE VIOLATION INASMUCH AS DISMISSAL OF THE ACTION DOES NOT ELIMINATE THE STATE'S TITLE CLAIM, AND THEREBY INVOLVES NO TAKING WITHOUT JUST COMPENSATION IN VIOLATION OF THE 5TH AMENDMENT.

THE BLOCK CASE WAS NOT ISOLATED. JUST AS NORTH DAKOTA WAS CHARGED WITH NOTICE OF A FEDERAL CLAIM DATING FROM 1955, SO UTAH WAS CHARGED BY THE FEDERAL GOVERNMENT WITH NOTICE OF FEDERAL CLAIMS TO UTAH LAKE, DATING FROM ITS ADMISSION

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TO THE UNION. CALIFORNIA WAS SIMILARLY INFORMED THAT AN 1899 RECLAMATION PROJECT CONSTITUTED NOTICE OF A FEDERAL CLAIM ON THE YUBA RIVER.

THE LIMITATIONS ON A STATE'S ABILITY TO ASSERT ITS CLAIMS, UNDER THE QUIET TITLE ACT AS INTERPRETED BY THE COURT, HAVE UNDESIRABLE POLICY CONSEQUENCES. BY SO LIMITING THE CLAIMS OF SOVEREIGN STATES, THE ACT ALLOWS THE NEGLIGENCE OF PUBLIC OFFICIALS TO RESULT IN THE LOSS OF PUBLIC PROPERTY. THE CURRENT LAW ALSO IGNORES THE PRACTICAL PROBLEMS OF PROVIDING NOTICE OR CONSTRUCTIVE NOTICE OF A LAND CLAIM TO A STATE AS OPPOSED TO AN INDIVIDUAL LANDOWNER. BECAUSE POTENTIAL FEDERAL AND STATE LAND CLAIMS MIGHT BE EXTENSIVE, ESPECIALLY IN WESTERN STATES, FOR THE MOST PART THEY ARE DORMANT AND UNRECOGNIZED. FOR THESE REASONS IT SIMPLY IS NOT PRACTICAL IN MANY CASES FOR THE STATES TO IDENTIFY ALL POSSIBLE CONFLICTING CLAIMS WITHIN A TWELVE YEAR PERIOD, OR INDEED, UNTIL FEDERAL OR STATE PLANNING ACTION INVOLVING PARTICULAR AREAS AWAKENS THE DORMANT DISPUTE.

THE QUIET TITLE ACT, AS INTERPRETED BY THE SUPREME COURT, HAS THE EFFECT OF UNDERMINING THE CERTAINTY OF LAND TITLES. THE AMENDMENTS TO THE QUIET TITLE ACT, PROPOSED IN H.R. 2484, WILL ON THE OTHER HAND ALLOW THESE DISPUTES TO BE SETTLED IN A COURT OF LAW. THE FEDERAL GOVERNMENT DOES NOT ACQUIRE TITLE TO LAND SIMPLY BECAUSE THE STATES ARE BLOCKED PROCEDURALLY BY THE QUIET TITLE ACT'S LIMITATION PERIOD FROM CONTESTING THE FEDERAL CLAIM IN COURT. A JUDICIAL RESOLUTION OF TITLE CLAIM DISPUTES WOULD ENCOURAGE THE ECONOMIC DEVELOPMENT AND ENVIRONMENTAL PROTECTION OF THESE LANDS BY SETTLING, FINALLY, THE QUESTION OF OWNERSHIP. AND, TITLE CLAIMS, ESPECIALLY TO SOVEREIGN LANDS LOCATED IN RIVERBEDS AND TIDELANDS, MUST BE CLEAR IF THE NATURAL RESOURCES AND SOURCES OF ENERGY FOUND THERE ARE TO BE MANAGED EFFECTIVELY.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THIS ISSUE HAS BEEN IGNORED TOO LONG. I URGE YOU TO REPORT FAVORABLY H.R. 2484 AT THE EARLIEST OPPORTUNITY.

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Testimony Before The

Subcommittee on Administrative Law and Governmental Relations

of the

House Committee on The Judiciary

In Support of

H.R. 2484

Presented by

Howard M. Schrinar, Wyoming Commissioner

of Public Lands

on Behalf of the State of Wyoming

and

The Western States Land Commissioners Association

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SUMMARY OF TESTIMONY

The State of Wyoming and the Western States Land Commissioners Association firmly support H.R. 2484 which would eliminate application of the statute of limitations, as currently contained in the Federal Quiet Title Act, in situations involving title disputes between a sovereign state and the federal government. The legislation has been endorsed by the Association of Western Attorneys General, the National Association of Attorneys General, the Western States Land Commissioners Association, and the Interstate Oil Compact Commission. The bill recognizes the sanctity and importance of state sovereignty and its passage is essential to prudent and effective management of state lands; lands which are managed by the states for the benefit of all of their citizens.

The vast majority of lands owned by the western states were granted to those states upon their admission to the Union. The lands transferred to the states were mandated by Congress to be held in sacred trust by the states and administered in trust for those important public purposes for which the lands were transferred. However, given the current language of the Federal Quiet Title Act, as interpreted by the U.S. Supreme Court in Block v. North Dakota, the states will be precluded from fulfilling their sacred trust responsibilities. In addition, the vital interest of the states are endangered by potential arbitrary and unreasonable federal administrative action since the running of the statute of limitations begins when a state knew or should have known of the claim of the United States. Given the hundreds of thousands of federal actions which have been taken, and which could be viewed as giving notice to the states, the states will lose valuable property rights because of an inability to quiet title.

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Introduction

The State of Wyoming and the Western Lands Commissioners Association firmly support passage of H.R. 2484 which would prohibit application of the statute of limitations to state title claims against the federal government. The bill is urgently needed to insure respect for, and protection, state sovereignty. Without the statutory amendments proposed under H.R. 2484, important state land interests will be subject to defeasance as a result of potentially arbitrary or intentional action of federal administrative agencies. Such a result is completely contrary to the mandate of Congress when it transferred lands to the individual states upon their admission to the Union.

While there are many valid arguments which fully support the curative intent of H.R. 2484, Wyoming would call the attention of the Committee to three arguments which Wyoming feels are of paramount importance. First, the lands which were transferred to the individual states upon their admission constitute trust assets to which the states owe a sacred duty. The current statute of limitation provision under the Federal Quiet Title Act serves only to bar the states from fulfilling their Congressionally mandated trust responsibilities. Second, given the enormous job of administering millions of acres of trust lands scattered throughout the individual states, it is impossible for the states to protect themselves against the unreasonable notice provisions currently contained in the Federal Quiet Title Act. Third, the inability to quiet title in mineral and other resource producing states an serve only to discourage resource exploration and development.

Sacred Trust Responsibilities of States

Upon admission to the Union, each of the western states were granted

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substantial amounts of land to be held in trust and administered for the benefit of various specified public institutions. While the vast majority of the lands were granted for the benefit of common schools, substantial acreages were also granted for the support of libraries, universities, health care facilities, and other important public service institutions. In reviewing the responsibilities which the states must fulfill in administering trust lands, the courts have been strident in their proclamations concerning such responsibilities. In ruling on the responsibilities that the State of Oklahoma bears toward its school trust lands, the Oklahoma Supreme Court recently noted:

> The School Lands Trust, administered by the Commissioners of the Land Office, for the State as Trustee, consist of certain lands and funds granted to the State of Oklahoma upon its admission into the Union by the Enabling Act. The gift of these lands and funds under the Enabling Act was accepted irrevocably by the people of Oklahoma, and such acceptance was set out in the Oklahoma Constitution under Article X, Section 1. These acceptance provisions of the Oklahoma Constitution and the Enabling Act constitute an irrevocable compact between the United States and Oklahoma, for the benefit of the common schools, which cannot be altered or abrogated. No disposition of such lands or funds can be made that conflict with the terms and purposes of the grant in the Enabling Act or the provisions of the Constitution relating to such land and funds. The State has an irrevocable duty as Trustee, to manage the trust estate for the exclusive benefit of the beneficiaries, and return full value from the use and disposition of the trust property. The express designation of the school lands and funds as a "sacred trust" has the effect of irrevocably incorporating into the Enabling Act, Oklahoma Constitution, and conditions of the grant, all of the rules of law and duties governing the administration of trust. (emphasis added) Oklahoma Education Ass'n, INc. v. NIgh et al., 642 P.2d 230 (Ok 1982) See also Lassen v. Arizona, 385 U.S. 458 (1967); Alaska v. University of Alaska, 624 P.2d 807 (Alaska 1981); County of Akamania v. Washington, 685 P.2d 576 (wash. 1984); Kanaly v. State By

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and Through Janklow, 368 N.W.2d 819 (S.D. 1985); Department of State Lands v. Pettibone, 702 P.2d 948 (Mont. 1985)

The states' irrevocable sacred trust responsibilities as mandated by Congress and as interpreted by numerous courts, can only be defeated by the current provisions of the Federal Quiet Title Act. The statute of limitations currently contained in the Quiet Title Act can be used by federal administrative agencies to nullify the trust responsibilities expressly imposed by Congress on the individual states. Nowhere in the Quiet Title Act or its legislative history did Congress manifest an intent to procedurally defeat the important substantive obligations which Congress itself had imposed upon the states. Such a result is, nevertheless, inevitable under the current Quiet Title Act provisions.

Magnitude of State Management Responsibilities

Under the current provisions of the Federal Quiet Title Act, a state must bring a quiet title action within twelve years after the state "knew or should have known" of the claim of the United States. Such a requirement is impossible to meet in those states which own substantial acreage. As originally passed by the Senate, the statute of limitations period under the Quiet Title Act began to run only after "actual knowledge" of the claim of the United States. However, the Department of Justice complained that "this provision ... would put a substantial administrative burden upon the United States" and suggested instead "that the action be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." While it may have been burdensome for the United States to give actual notice of a federal claim, it is impossible for states to monitor the hundreds of thousands of federal

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activities which the Justice Department could argue the states should have known about for statute of limitations purposes.

A review of Wyoming's land ownership pattern, as well as that of the various federal agencies, clearly shows the impossibility of tracking every federal action that could affect the question of whether Wyoming should have known of a federal claim. (See attached Bureau of Land Management Map of Land Ownership in Wyoming.) Wyoming's total land is owned and administered according to the following approximate breakdown:

	Acres		% Ownership
Total Area in Wyoming	62,664,960		100%
Owned by Wyoming	3,901,344		6%
Owned by United States:			
Bureau of Land Management	17,807,173	28%	
Forest Service	9,254,397	14%	
National Park Service	2,390,303	3%	
Bureau of Reclamation	408,334	1%	
Fish and Wildlife Service	49,463	-	
Department of Defense	15,995	-	
Bureau of Indian Affairs	1,296	-	
Other Federal Agencies	8,074	-	
Total Federal Acreage	29,937,035		47%
Other (including private and Indian)	28,826,581		47%

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As a review of the attached map clearly shows, Wyoming state land is fragmented, is spread throughout the entire state, and is surrounded by or abuts federal land administered by numerous federal agencies. Given the interspersed nature of the state and federal lands in Wyoming, thousands of federal actions have been and continue to be taken which the Justice Department could argue meet the "should have known" criteria under the Federal Quiet Title Act. The following partial enumeration of federal actions potentially affecting state lands clearly demonstrates the impossibility of tracking and analyzing every federal action to determine whether it constitutes a federal claim which conflicts with potential state trust land rights.

Action	Numbers	Acres
1. Oil and Gas Leases	32,266	22,669,549
2. Coal, Geothermal, Phosphate, Sodium, and Other Leases	194	387,586
3. Mineral Patents Issues	2,723,904	12,265,083
4. Mining Claims Accepted for Recording	22,609	N/A
5. Grazing Leases in Effect	1,725	N/A
6. Grazing Permits in Effect	1,044	N/A
7. Rights-of-Way Grants (current)	998	2,449 miles
8. Other Miscellaneous Activities:		
a. Patents		
b. Land Exchanges		
c. Withdrawals		
d. Desert Land Entries		

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Action		Numbers	Acres
e.	Homestead Entries		
f.	Special Land Use Permits		
g.	Land Use Authorizations		
h.	Recreation and Public Purpose Leases		
i.	Timber Sales		
j.	Free-Use Timber and Non-Timber Forest Product Permits		
k.	Special, Competitive, and Private Recreation Permits		
l.	Wilderness Study Areas		
m.	Soil and Watershed Conservation Programs		

The State of Wyoming would have to employ at least one hundred additional staff members just to track the limitless number of federal actions which have been taken in the past, and will be taken in the future, which might constitute a claim of ownership by the United States. Such a burden is clearly extraordinary and imposes requirements of diligence which clearly cannot be met. In addition, such action would constitute waste of federal and state tax dollars with no measurable benefit to anyone.

Impact on Orderly Development of Mineral Resources

As the Supreme Court in Block v. North Dakota indicated, a quiet title action which is dismissed because of the statute of limitations provided under the Quiet Title Act does not resolve the question of who holds title to the property in dispute. The substantive question of title remains in limbo. Therefore, any dispute between a state and the federal government over ownership of particular land could go on ad infinitum without title being

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quieted in either the state or federal government. Such a result will work to the detriment and injury of both the state and the United States.

Wyoming, like many other Western states, is very dependent upon its resource industries for financial support and economic development. However, the development and production of minerals and other resources would come to a rapid halt if energy companies could not safely determine who owned the resources in which the companies were interested. Therefore, if companies could not identify the true legal owners of the resources, those resources will not be developed. Such a situation can only result in lost revenues to the states and the federal government and defeat logical and efficient development of valuable resources owned by our governments.

There is little question that application of the Federal Quiet Title Act to state trust lands could have major adverse consequences to the mineral interests of the State of Wyoming. By letter dated October 23, 1985, Secretary of Interior Donald Hodel provided Governor Ed Herschler information concerning the need for substantial resurvey work in Wyoming's Powder River Basin. According to Secretary Hodel, 107 townships (2,465,000) acres in the mineral rich Powder River Basin were in critical need of resurveying. The critical need for resurveying became apparent because of several factors including "increasing evidence of fraud by the original contract surveyors." Such resurveys are expected to significantly impact Wyoming's valuable mineral rights in the area.

According to Secretary Hodel, the Bureau of Land Management resurvey program "is designed to minimize the conflicts created by this situation. Inevitably, ownership conflicts exist which will have to be resolved—by agreement among landowners, by quiet title suits, etc." (emphasis added).

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Since the original surveys conducted in the 1870's and 1880's and the current resurveys are controlled and managed by federal agencies, it is patently unfair to punish Wyoming by barring it from quieting title to lands which rightfully and legally belong to the state. Yet, under the existing provisions of the Federal Quiet Title Act, Wyoming may be procedurally precluded from protecting its trust lands through a quiet title action even when the BLM admits that such action will be necessary to straighten out the survey problems in the Powder River Basin.

Attachments 1,2 and 3 graphically show the impact that BLM's resurveys will have on ownership rights in the Powder River Basin. Attachment 1 depicts the original BLM survey plat of T53N,R69W in the Powder River Basin. Such plats have traditionally been used for issuance of mineral leases and other claims of ownership. Attachment 2 shows the same township after it was resurveyed. Attachment 3 shows that area of land which was erroneously included in certain land sections under the BLM's original survey plat. As Attachment 3 clearly shows, some of the survey lines have been moved by almost one-half of a mile. If the BLM's resurvey proves beneficial to BLM, they can sue Wyoming to quiet title to BLM's newly discovered land. However, in situations in which resurvey indicated Wyoming is entitle to additional acreage, the Justice Department need only to raise the statute of limitations flag and Wyoming's valuable title rights could be procedurally defeated. Such an anomalous situation should not be continued.

Conclusion

H.R. 2484 is desperately needed to correct the serious problems presented by the Supreme Court's interpretation of the Federal Quiet Title Act. The bill will allow the states to fulfill their sacred trust responsibilities, will protect the sovereign integrity crucial to state government, and will eliminate a potentially serious hurdle to proper resource development and production. In short, H.R. 2484 reflects good business sense and will lead to better government.

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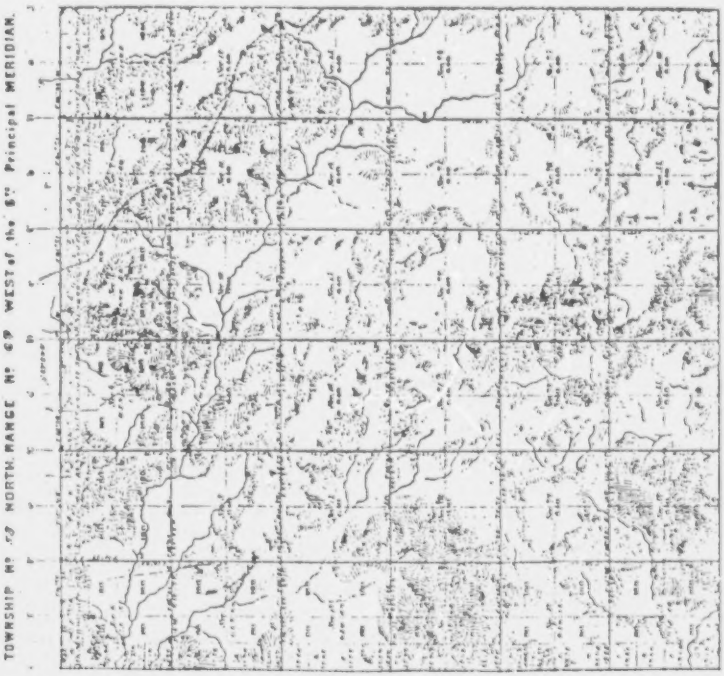

ATTACHMENT 1

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TOWNSHIP 53 NORTH, RANGE 69 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, WYOMING.

DEPENDENT RESURVEY

A history of surveys is contained in the field notes.

This plat represents the dependent resurvey of the Thirteenth Standard Parallel North, through R. 5 W., the Eighth Auxiliary Meridian West, through T. 53 N., between Rs. 68 and 69 W., the west and south boundaries and the subdivisional lines designed to restore the corners to their true original locations according to the best available evidence, T. 53 N., R. 69 W., Sixth Principal Meridian, Wyoming.

Certain modified lots and other shown hereon pertain to federal coal set lands only. Tracts are indicated hereon. The lettering and areas are as shown on the plat approved July 6, 1983.

Survey executed by Anthony Hale*, Cadastral Surveyor, Wyoming July 17 1981, and completed November 2, 1981. *Pursuant to Special Instructions dated June 10, 1981, for Orona Ha... ash, Wyoming.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Cheyenne, Wyoming Nov 24, 1981

This plat is hereby conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Richard L. Eaton

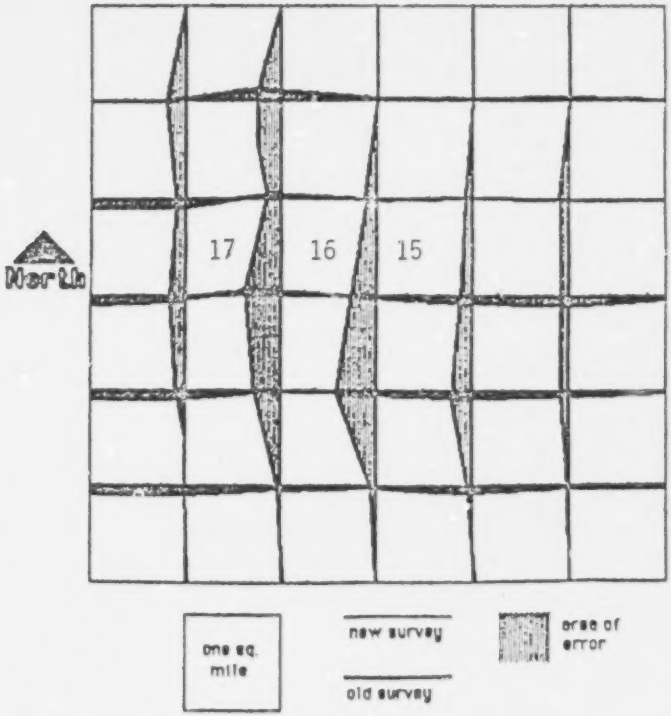
Chief Cadastral Surveyor for Wyoming

ATTACHMENT 2

96

SURVEY WOES: Lease ownership turns up gray

Township 53 north, Range 69 west of the Sixth Principal Meridian, Wyoming



ATTACHMENT 3

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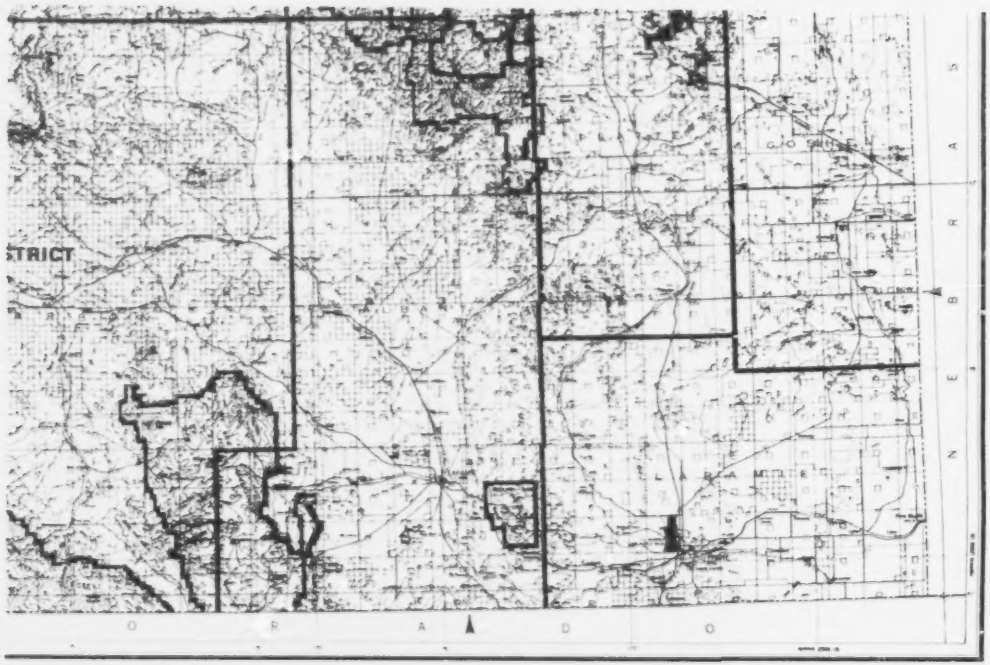

STATE OF WYOMING

LAND STATUS

1984

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

National Governors' Association

Lamar Alexander
Governor of Tennessee
Chairman

Raymond C. Scheppach
Executive Director

March 12, 1986

The Honorable Dan Glickman
U.S. House of Representatives
2435 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Glickman:

As stated in the attached resolution, the National Governors' Association strongly supports amendments to the Quiet Title Act to declare its statute of limitations inappropriate to state claims.

This change is necessary to permit the States to secure orderly judicial resolution of title disputes with the United States which impede both State and Federal land administrators.

The Supreme Court in Block v. United States, 461 U.S. 273 (1983), held that the procedural limitations of the Quiet Title Act apply to the States, not to extinguish the State claim, but only to bar its assertion in court. This leaves the States with possibly valid title claims against the Federal Government, but with no basis for their orderly judicial resolution. As the Court noted, however, present law leaves the United States free to assert its title claims against the States, should it choose to seek judicial resolution. Otherwise, Federal land administrators can simply ignore the State claims. Indeed, the fact that the State cannot resort to litigation means that state efforts to secure an administrative resolution by negotiation with the Federal land managers may be compromised.

The Governors believe that this distortion of the balance between the Federal Government and the States under our federal system constitutes unwise public land policy and equally unwise legal policy.

I appreciate and support your efforts to advance quiet title amendments in the House, and urge early enactment of this important legislation.

Sincerely,

Governor Anthony S. Earl
Chairman
Energy and Environment Committee

Attachment

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National Governors' Association

Lamar Alexander
Governor of Tennessee
Chairman

Raymond C. Scheppach
Executive Director

RESOLUTION OF THE NATIONAL GOVERNORS' ASSOCIATION

ENERGY AND ENVIRONMENT COMMITTEE

The state and federal governments share responsibility for orderly development and management of the nation's energy resources. As disputes over state or federal ownership of lands associated with these resources may preclude their development, it is in the interest of both parties to resolve such controversies.

The Quiet Title Act of 1972 applied a twelve-year statute of limitations to claims against the federal government regarding title to parcels of land. It also removed a prior prohibition, based on federal sovereign immunity, on such suits against the federal government. Under the principle that no statute of limitations runs against sovereign states, quiet title actions were brought by states against the federal government for resolution of title disputes.

The U.S. Supreme Court decision in Block v North Dakota (May 3, 1983), held that the twelve-year statute of limitations does apply to state claims. The effect of this decision is to leave unresolved state/federal title disputes. If the United States can successfully demonstrate that the state knew or should have known of a federal claim twelve years before the suit, the quiet title action would be dismissed without determination of its merits. The basic title issue will remain judicially unresolved.

Because energy and other resources frequently occur on publicly-owned land, the need to settle definitively federal/state title disputes is evident. Without final judgment, leases of parcels in question will be uncertain as to their rights to occupy, and granting of leaseholds may be stymied.

Congress is currently considering legislation amending the Quiet Title Act to declare the statute of limitations inapplicable to state claims. The Governors support such legislation as necessary to provide orderly land management and domestic energy resource development.

Adopted by Committee on Energy and Environment, February 27, 1984

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001-1572 · (202) 624-5300

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 2, 1985

The Honorable Dan Glickman
United States Representative
2435 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Glickman:

I am writing to you in regard to H.R. 2484 which has been reintroduced by Representatives Berman of California and McCollum of Florida. This legislation is for the purpose of exempting states from the 12-year statute of limitations in the federal Quiet Title Act. Such statutes should not be applicable to sovereign states and, as I have been advised that you are chairing the subcommittee concerned with this matter, I am writing to you in the hope you might hold a hearing on this legislation as soon as possible.

This legislation is being supported by the National Governor's Association, the National Conference of State Legislatures, the Interstate Oil Compact Commission, the West States Land Commissioners and the National Assocation of Attorneys General. Last year there were hearings from the subcommittee on Administrative Law and Governmental Relations of House Judiciary, but it was not reported out of subcommittee.

Your assistance in this very important matter will be appreciated.

Very truly yours,

Robert T. Stephan
Attorney General

RTS:dp
cc: The Honorable John K. Van De Kamp
Attorney General of California

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STATE OF WYOMING
OFFICE OF THE GOVERNOR
CHEYENNE 82002

ED HERSCHLER
GOVERNOR

March 3, 1986

The Honorable Dan Glickman, Chairman
House Subcommittee on Administrative
Law and Governmental Relations
House Committee on the Judiciary
B 351-A Rayburn Building
Washington, D.C. 20515

Dear Mr. Chairman:

As you know, in 1983 the U.S. Supreme Court held in Block v. North Dakota that a land title claim asserted by a state against the federal government must be brought within the twelve year limitations period in the Quiet Title Act of 1972. The effect of this decision is to limit the time period during which the federal government consents to be sued by a state to resolve conflicting land claims. Passage of the twelve year period without a state claim does not, however, lay to rest the underlying title dispute. This has detrimental implications for both the states' and the federal government's ability to effectively administer public lands.

S.1617 would reverse that ruling by amending the Quiet Title Act of 1972 to declare the twelve year limitations period inapplicable to state claims. In 1984, the National Governors' Association endorsed enactment of this type of legislation. As governors of states with continuing land title conflicts with the federal government, we support repeal of the limitations period as it applies to states. This is consistent with the long established common law principle that a statute of limitations does not run against the sovereign states.

We recognize, however, that the Department of Justice has objected to a total repeal because of

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its concern that federal programs would be disrupted by continuing assertions of state claims. In response to the concerns which have been expressed, a compromise proposal has been developed. It is set out and explained in the enclosed February 7, 1986 letter from the Conference of Western Attorneys General to Attorney General Meese.

Legislation is clearly necessary to redress the problems created by Block v. North Dakota. While we would prefer to see a simple repeal of the limitations period as set out in S. 1617, we believe that the compromise discussed above adequately addresses the states' concerns and also responds to the problems with repeal of the limitations period that were identified by the Department of Justice.

This letter expresses not only my own views but also those of Governors Sheffield of Alaska, Evans of Idaho, Kerrey of Nebraska, Sinner of North Dakota, and Bangerter of Utah. We urge your committee to act quickly on this issue. Thank you for your consideration of our views.

Yours sincerely,

Ed Herrmann

EH:nfs

Enclosure

cc: The Honorable Bill Sheffield
The Honorable John Evans
The Honorable Robert Kerrey
The Honorable George Sinner
The Honorable Norman Bangerter
Paul M. Cunningham, WGA Executive Director

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CONFERENCE OF
WESTERN ATTORNEYS GENERAL
THE COUNCIL OF STATE GOVERNMENTS

720 SACRAMENTO STREET, SAN FRANCISCO, CALIFORNIA 94108 (415) 986-3760
EXPRESS MAIL

February 7, 1986

Honorable Edwin Meese, III
Attorney General of the United States
Department of Justice, Room 519
10th and Constitution Avenue, N.W.
Washington, DC 20530

Dear Attorney General Meese:

Throughout your career in the executive branch, you have expressed a consistent concern for the constitutional federal system, and respect for the states as sovereigns having independent powers and responsibilities. As Attorneys General of public land states, we are particularly appreciative of that concern. Now we ask your support in solving a problem that has been especially frustrating to healthy federal-state relations -- the states' inability to resolve title disputes with the United States over sovereign and trust lands.

The United States holds a third of our nation's land -- over half the territory of the western states. Many of these holdings are checkerboarded with private or state-owned parcels. Early surveys were often incomplete or inaccurate, raising questions of ownership and access. It is inevitable, under these circumstances, that controversies arise over the right and title of state and federal claimants. The orderly development of these lands depends upon effective resolution of such disputes. When the federal Quiet Title Act was passed in 1972, many of us felt that a mechanism for solving such title disputes had been created. The Act authorizes the federal district courts to adjudicate disputed titles. It was carefully designed to avoid disruption of federal programs by permitting the government to retain possession of disputed lands and to compensate claimants if their claim proves valid. Finally, to avoid litigation over stale claims, it incorporated a 12-year limitation on the time allowed for suit, commencing on the date a claimant knew or should have known of a federal claim.

Few states thought at that time that the Department of Justice would assert this limitation against sovereign states, and for a number of years it wisely did not. Even fewer thought that the U.S. Supreme Court would buy such an argument. Sound public policy is reflected in the traditional common law rule that statutes of limitations are inapplicable to sovereigns. Indeed, in its earliest decisions, the Supreme Court refused to apply such limitation periods to states, holding "[We] cannot, without committing a great injustice, apply to this case the rules as to time, which govern courts of equity; in suits between individuals." (Rhode Island v. Massachusetts (1839) 38 U.S. (13 Pet.) 23, 24.)

The claims which states may have against the federal government are not, by their nature, mere disputes over property. State lands, for the most part, consist of the beds of navigable waters which came to the original 13 states by virtue of the Revolution, and to states later admitted under the constitutional equal footing doctrine. States hold

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these lands as an incident of their sovereignty. Other lands — such as state school lands — were granted to the states in partial compensation for the retention by the United States of vast acreages of public lands. They are held in trust for the support of the public schools.

Nevertheless, in 1983 the Supreme Court acquiesced in the arguments of the United States in Block v. North Dakota (1983) 461 U.S. 273, and held that states as well as private claimants are the subject to the 12-year statute. However, the court made it clear the interposition of the statute did not remove the cloud over disputed title, but merely prevented its judicial resolution.

This rule — under which the United States is free to initiate quiet title litigation at will but states are precluded — is inconsistent with both sound consitutional principles of federalism and the practical administration of the public lands. Successful assertion of this limitation does not resolve conflicting claims. It does not prevent states and federal claimants from issuing leases, granting easements or otherwise attempting to assert ownership interests. It merely precludes orderly, judicial resolution of such conflicts on the merits.

Legislation which would reverse Block v. North Dakota ruling and give states the same opportunity as the federal government to have their title claims adjudicated is pending in Congress [H.R. 2484 and S. 1617.] It is supported by the National Governors Association, the National Conference of State Legislators, the National and Western Associations of Attorneys General, and the Western States Land Commissioners Association. However, continued opposition of the Justice Department has thrown a barrier in the way of its passage. We are aware of your department's concerns that federal land programs not be disrupted by the assertion of stale claims. We continue to believe that the better course of action is to exempt the states from the statute of limitations outright in order to avoid the necessity for states to file premature lawsuits out of their concerns over expiration of the limitation period. In a spirit of compromise, however, we suggest a possible alternative: that the statute of limitations be retained, but that the special interests and problems of the states be recognized by addition of a specific notice provision making clear what federal action is needed to start the statute running.

Litigation over the nature of federal claims necessary to put a state on fair notice has been extensive, and the results have varied widely among courts. For instance, the Department of Justice has contended that one state was put on notice of a federal claim on the date of its admission to the union. The Ninth Circuit has affirmed a holding that participation in a joint federal-state reclamation project in 1899 was sufficient to start the statute running. In contrast, other district courts have held that the notice required must be clear, unequivocal, and directed to the state agency chargeable with administration of state lands.

The requirement of express, unequivocal notice of a federal claim directed to the appropriate agencies would constitute a fair standard for the states.

At the same time, states should be given a three-year "window" in which to examine areas of potential dispute and bring any actions needed to resolve title disputes not previously adjudicated.

We are mindful of the concerns of your department and federal land managers, and we believe that these amendments represent a desirable balance between state and federal interests. In seeking this balance, we have attempted to address those concerns by

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incorporating notice proposals urged by Assistant Attorney General Henry Habicht during congressional hearings in June 1984. We believe that the proposed amendments would eliminate confusion now extant among the federal circuits as to what constitutes proper notice to the states, while at the same time recognizing the role of states in our federal union. Above all, the amendments would let both states and federal agencies proceed in the orderly planning, administration and development of the public lands.

This letter is written on behalf of the Conference of Western Attorneys General, which authorized the proposed amendment language in December 1985. This letter and the proposed amendment have been reviewed by the member Attorneys General in our conference. As of this date, Attorneys General Brown (AK), Van de Kamp (CA), Jones (ID), Greely (MT), McKay (NV), Spaeth (ND), and McClintock (WY) have specifically authorized me to add their endorsement. In addition, Attorney Steve Clark of Arkansas, who is not a member of our conference, has added his endorsement to this letter.

A draft of our proposed amendment is attached. We respectfully request your favorable consideration of our proposal, and look forward to discussing the issue further at the meetings of the National and Western Associations of Attorneys General on March 3-5 of this year.

Sincerely,

David Frohnmayer

David Frohnmayer
Oregon Attorney General
Chair, Conference of Western Attorneys General

DF:pws:AG20-41
Attachment: draft amendment to 28 USC 2409a (f)

cc: Honorable Senator Malcolm Wallop
Representative Howard Berman
Assistant Attorney General Henry Habicht
Interior Secretary Donald Hodel

Honorable Hal Brown (AK)
Honorable Leulumoega S. Lutu (AS)
Honorable Robert K. Corbin (AZ)
Honorable John K. Van de Kamp (CA)
Honorable Duane Woodard (CO)
Honorable Richard B. Opper (GU)
Honorable Corinne W. A. Watanabe (HI)
Honorable Jim Jones (ID)
Honorable Michael T. Greely (MT)
Honorable Brian McKay (NV)
Honorable Paul G. Bardacke (NM)
Honorable Nicholas Spaeth (ND)
Honorable Rexford Kosack (CM)
Honorable David L. Wilkinson (UT)
Honorable Kenneth O. Eikenberry (WA)
Honorable Arch G. McClintock (WY)

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AMENDMENTS TO THE FEDERAL QUIET TITLE ACT

Subsection (f) of subsection 2409a of title 28, United States Code, is amended by inserting after "United States" the following:

> except that in cases in which the plaintiff is a state and interests in sovereign or trust lands are at issue, it shall be deemed to have accrued on the date that clear and unequivocal written notice of the claim of the United States is given to that state's governor, attorney general and agency charged with administration of state lands.

Subsection (f) is further amended by adding after the second sentence:

> Notwithstanding the above, any civil action under this section may be brought by a state within three years of the enactment of this act with respect to claims which have not previously been finally decided on the merits.

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BRUCE BABBITT
GOVERNOR

OFFICE OF THE GOVERNOR
STATE HOUSE
PHOENIX, ARIZONA 85007

IN REPLY
REFER TO

March 3, 1986

The Honorable Dan Glickman
Chairman, Administrative Law and
Intergovernmental Relations
Subcommittee of the Judiciary Committee
Room B351-A
Rayburn House Office Building
Washington D.C. 20515

Dear Representative Glickman:

The purpose of this letter is to express my support for H.R. 2484 which seeks to amend the Federal Quiet Title Act. Other supporters of this proposal include the National Governors' Association, the National Conference of State Legislators, the National Associations of Attorneys General, Conference of Western Attorneys General, Western Legislative Conference, and the Western States Land Commissioners Association.

My support of H.R. 2484 is based principally upon its proposed exemption of states from the application of the 12-year statute of limitations. This would allow land disputes between the Federal government and the states to be resolved on the merits, thereby negating the United States Supreme Court's decision in Block v. North Dakota. As a result of the Block decision, the period of limitations effectively bars most title claims.

I urge your favorable consideration of this legislation.

Sincerely,

Bruce Babbitt
Governor

BR/bss

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 25, 1986

The Honorable Dan Glickman, Chairman
House Subcommittee on Administrative Law
and Governmental Relations
B-315A Rayburn House Office Building
Washington, D.C. 20510

Dear Representative Glickman:

The purpose of this letter is to place in the record Alaska's strong support for the provisions of H.R. 2484, which would exempt the claims of states from the statute of limitations in quiet actions against the United States currently found in 28 U.S.C. § 2409a. We hope the Congress will give serious consideration to this proposal to avoid the necessity for Alaska, over the next few years, to file a substantial number of lawsuits -- possibly numbering in the hundreds -- merely to protect our rights, even if there is no substantive dispute with the United States over the lands at issue.

Before turning to some of the specific controversies that Alaska will face in the future, it is helpful to examine the circumstances which may force Alaska to file such a large number of actions which would not be necessary but for the twelve-year statue of limitations contained in 28 U.S.C. § 2409a. Virtually all of these cases concern sovereign submerged lands underlying navigable waters. Under the equal footing doctrine of Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845), states own the submerged lands underlying navigable waters within their boundaries. Prior to a state's admission to the Union, the United States holds such lands in territories in trust for any future state or states which might be created out of those territories. Shively v. Bowlby, 152 U.S. 1 (1894). Congress made this principle expressly applicable to the Territory of Alaska in the Alaska Right-of-Way Act, 30 Stat. 409, 43 U.S.C. § 942-1 (now repealed; formerly codified at 48 U.S.C. § 411). Section 1 of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. note preceding section 24, provides in part that Alaska "is declared admitted into the Union on an equal footing with the other States in all respects whatever."

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Notwithstanding the general equal footing doctrine principle, applicable to all states under the Constitution, and its express extension and application to Alaska in the Alaska Right-of-Way Act and the Statehood Act, the United States has taken the position that certain pre-statehood actions by the federal executive branch defeated Alaska's equal footing doctrine rights to certain submerged lands and that title to those lands remains with the federal government. For the most part, these assertions by the federal government relate to pre-statehood executive withdrawals and reservations which were still in effect on the date of statehood. This position has been taken despite a specific Congressional finding that many of these "withdrawals are either excessive in size or totally unnecessary." H.R. Rep. No. 624, 85th Cong., 1st Sess. 8 (1957). These withdrawals and reservations totaled "approximately 95 million acres -- more than one-fourth the total area of Alaska." Id., p. 6.

Initially, disputes arose only when there was a particular conflict over utilization of the lands or resources at issue. See, e.g., United States v. Alaska, 423 F.2d 764 (9th Cir.), cert. denied, 400 U.S. 967 (1970); United States v. City of Anchorage, 437 F.2d 1081 (9th Cir. 1971). More recently, however, the United States has become more assertive in stating its position that pre-statehood executive withdrawals or reservations defeated Alaska's equal footing doctrine rights, and that title to sovereign submerged lands remains with the United States, even in the absence of any specific dispute over resource utilization.

For example, in Solicitor's Opinion M-36911, 86 I.D. 151 (1978), the Solicitor of the Department of the Interior concluded that Public Land Order ("PLO") defeated Alaska's equal footing doctrine rights to submerged lands underlying navigable waters on Alaska's North Slope. PLO 82 withdrew almost 50 million acres "from sale, location, selection and entry under the public-land laws of the United States" and reserved the minerals in those lands "for use in connection with the prosecution of [World War II]." It was revoked, presumably as "either excessive in size or totally unnecessary" as described by Congress, in 1960, one year after Alaska was admitted to the Union. Nonetheless, the Solicitor concluded that the mere fact that PLO 82 was in existence on the date of statehood, whether necessary or not, defeated Alaska's equal footing doctrine rights to any sovereign submerged lands underlying navigable waters located anywhere in the almost 50 million acres constituting Alaska's North Slope.

This same argument is increasingly being made with respect to other pre-statehood withdrawals and reservations, notwithstanding that most of them may have been "either excessive in

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size or totally unnecessary." The pertinent point here is that, once the United States gives notice to Alaska that it attributes such effect to a pre-statehood withdrawal or reservation, the twelve-year statute of limitations under 28 U.S.C. § 2409a begins to run. As a result, even in the absence of any particular dispute between Alaska and the United States over the lands at issue or the resources therein, Alaska must bring suit within 12 years merely to ensure that we do not waive the opportunity to protect our rights.

The United States may argue that the twelve-year statute of limitations began to run on the date of statehood and that any such claims by Alaska at this late date are time-barred. Of course, that would mean that the twelve-year period expired in 1971, the year before the United States waived its sovereign immunity to quiet title actions with the enactment of 28 U.S.C. § 2409a in 1972. However, subsection (f) of that statute provides: "Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." In light of the constitutional equal footing doctrine principle and its express statutory application to Alaska, the general proposition that the term "public lands" used in these pre-statehood executive withdrawals and reservations does not generally include tide and submerged lands (see, e.g., Mann v. Tacoma Land Co., 153 U.S. 273 (1894)), and the general rule that pre-statehood federal actions are presumed not to affect a state's equal footing doctrine rights (see generally Montana v. United States, 450 U.S. 544 (1981)), we believe a court will not find that Alaska "knew or should have known of the claim of the United States" until such a claim is made with respect to a particular pre-statehood executive withdrawal or reservation.

Regardless of the merits of either contention with respect to notice, however, the fact remains that litigation will result. From Alaska's perspective, we will have no alternative but to initiate such litigation in order to protect our interests even if there is no substantive dispute over the lands at issue.

Moreover, Congress created a host of new federal conservation units in the Alaska National Interest Conservation Act, P.L. 96-487, 94, Stat. 2371. Those conservation system units consist of "public lands," which are defined as "Federal lands" which, in turn, are defined as "lands the title to which is in the United States after the date of enactment this Act;" "land" means "lands, waters, and interests therein." See Section 102 (1), (2) and (3). This may or may not indicate a federal claim to all submerged lands underlying navigable waters within the

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conservation system units created. Specific claims to submerged lands would appear to be made with respect to the Alaska Maritime National Wildlife Refuge, the Arctic National Wildlife Refuge, the Kenai National Wildlife Refuge, the Kodiak National Wildlife Refuge and the Yukon Delta National Wildlife Refuge, all of which are described as "including lands, waters, interests, and whatever submerged lands, if any, were retained in Federal ownership at the time of statehood." See section 303 (1), (2), (4), (5) and (7).

If the statute of limitations in 28 U.S.C. § 2409a is not amended to exempt state claims, Alaska will have no alternative but to file suit with respect to each of these areas in order to protect our rights. If an exception is made for state claims, however, such lawsuits would not be necessary until a specific conflict arose between the state and the federal government.

We would prefer to avoid unnecessary litigation with the federal government if at all possible. An amendment exempting state claims from the twelve-year statute of limitations in 28 U.S.C. § 2409a would enable us to avoid litigation in the vast majority of cases. We have found that, where resource conflicts do not necessitate a determination of title, Alaska and the United States have been able to work cooperatively to jointly address mutual land management concerns irrespective of title. Examples include the activities of the Alaska Land Use Council, activities related to cooperative planning for the Bristol Bay region, and planning activities related to the Kenai River Special Management Area. While the effect of forcing Alaska to litigate ownership of submerged lands with the federal government on these and similar cooperative efforts cannot be measured at this time, our experience as been that adversarial proceedings generally do not foster cooperation.

For all of the foregoing reasons, and in the spirit of cooperative federalism, we urge favorable consideration of H.R. 2484.

Sincerely,

Harold M. Brown
Attorney General

HMB:GTK:dim
cc: Governor Bill Sheffield
Attorney General Jim Jones, State of Idaho
Ray Marvin, NAAG

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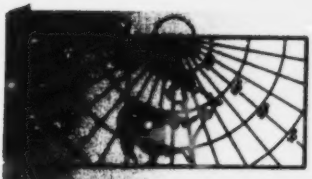

THE WESTERN STATES
LAND COMMISSIONERS ASSOCIATION

Alaska	Minnesota	Oregon
Arizona	Montana	South Dakota
California	Nebraska	Texas
Colorado	Nevada	Utah
Hawaii	New Mexico	Washington
Idaho	North Dakota	Wisconsin
Louisiana	Oklahoma	Wyoming

1807 13th Street
Sacramento, CA 95814

February 26, 1986

The Honorable Dan Glickman
U.S. House of Representatives
2435 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Glickman:

On March 5, 1986 the Subcommittee on Administrative Law and Governmental Relations will consider HR 2484. These proposed amendments are of critical concern to state land management administrators. Both this Association and the Eastern Lands and Resources Council have adopted resolutions concerning the need for changes in the 12-year limitation on filing suit to quiet title. Copies of these resolutions are attached.

Sincerely,

James F. Trout

JAMES F. TROUT
Secretary

Attachment

cc: William Shattuck
Kevin Richardson
Ralph Miles, Pres. WSLCA
Stephen Zerangue, Pres. ELRC

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RESOLUTION ENDORSING MEANS FOR THE PROMPT
RESOLUTION OF STATE-FEDERAL LAND TITLE DISPUTES

WHEREAS, it is the responsibility of the members of this Association to plan for the orderly development and utilization of state lands; and

WHEREAS, numerous disputes over public land titles between the federal and state governments presently exist and even more will unquestionably be found in the course of further survey and development of public lands; and

WHEREAS, it is in the interest both of the states and the federal government that judicial resolution of such disputes take place to prevent serious administrative difficulty and delay in the utilization of the public lands of both federal and state sovereigns in the public interest; and

WHEREAS, in Block v. North Dakota, the United States Supreme Court held that such judicial resolution may be prevented by the application of the statute of limitations in the Federal Quiet Title Act; and

WHEREAS, the Court's holding has resulted in the prevention of judicial resolution of such disputes, leaving clouds on their titles and precluding effective planning for land and mineral development and conservation; and

WHEREAS, the application of a 12-year statute of limitations to state claims, many of which arose on admission to statehood in the nineteenth century, is inherently absurd; and

WHEREAS, legislation in the form of HR 2484, has been introduced in Congress to provide a means for the resolution of such title disputes by exempting the claims of states from the application of the 12-year limitation period in the Federal Quiet Title Act;

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EASTERN LANDS AND RESOURCE COUNCIL

April 11, 1985

WHEREAS, disputes over title to lands between federal and state sovereigns have caused uncertainty and impeded the orderly resolutions of title disputes in the states; and

WHEREAS, it is in the interest of all states and the United States that such uncertainties be decided on their merits; and

WHEREAS, the U.S. Supreme Court held in Block v. North Dakota that the orderly resolution of title disputes between states and the federal government may be prevented by the application of the statute of limitations to the claims of sovereign states against the United States; and

WHEREAS, it is an accepted and cardinal principle of law that no statute of limitations should run against a sovereign state; and

WHEREAS, even though states are precluded by the statute of limitations from asserting claims against the United States, a cloud will nevertheless remain over the disputed property, thus preventing the resolution of title and seriously impeding the process of leasing and orderly utilization of the natural resource upon such land; and

WHEREAS, such controversies should be resolved by litigation on the merits; and

WHEREAS, the ELRC is composed or representatives of many of the Eastern States where these types of disputes may arise; and

WHEREAS, such legislation would achieve this result by exempting sovereign states from application of the 12-year statute of limitations on the Federal Quiet Title Act in disputes with the United States over land titles;

NOW, THEREFORE, BE IT RESOLVED, that this Council reommends that each of the member states urges its Congressional delegation, the appropriate members of Congress, the United States Attorney General and the Secretary of the Interior to support enactment of this Federal legislation.

NOW, THEREFORE, BE IT RESOLVED, that this Association endorses the principle of exemption of sovereign states from the statute of limitations in quiet title actions against the United States, in order that such actions may be resolved on the merits, and finds that HR 2484 and any other legislation to that effect will benefit the members of the Western States Land Commissioners Association.

Passed this 22nd day of August, 1985.

B.E. Lommen
President

James L. Stout
Secretary

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ELRC
EASTERN LANDS AND RESOURCES COUNCIL

March 3, 1986

The Honorable Dan Glickman
B - 351A Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Representative Glickman:

The Eastern Lands and Resources Council is an organization of public lands executives and managers concerned with public lands management information, resource development and protection issues. The Council supports the amendment to the Quiet Title Act which is being heard in your subcommittee this week and passed the enclosed resolution at our meeting in Washington last year.

We ask for your favorable consideration of HR-2484.

Sincerely,

Rodney W. Sando
Vice President for Legislation

RWS:SW:cp
Enc.
c.c. Executive Council

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ELRC RESOLUTION RE QUIET TITLE ACT

RESOLUTION ENDORSING LEGISLATION
TO PERMIT RESOLUTION OF STATE-FEDERAL PROPERTY
DISPUTES ON THE MERITS

WHEREAS, disputes over title to lands between federal and state sovereigns have caused uncertainty and impeded the orderly resolutions of title disputes in the states and:

WHEREAS, it is in the interest of all states and the United States that such uncertainties be decided on their merits; and

WHEREAS the U.S. Supreme Court held in Block v. North Dakota that the orderly resolution of title disputes between states and the federal government may be prevented by the application of the statute of limitations to the claims of sovereign states against the United States; and

WHEREAS, it is an accepted and cardinal principle of law that no statute of limitations should run against a sovereign state; and

WHEREAS, even though states are precluded by the statute of limitations from asserting claims against the United States, a cloud will nevertheless remain over the disputed property, thus preventing the resolution of title and seriously impeding the process of leasing and orderly utilization of the natural resources upon such land; and

WHEREAS, such controversies should be resolved by litigation on the merits; and

WHEREAS, the ELRC is composed of representatives of many of the Eastern States where these types of disputes may arise; and

WHEREAS, such legislation would achieve this result by exempting sovereign states from application of the 12 year statute of limitations in the Federal Quiet Title Act in disputes with the United States over land titles;

NOW THEREFORE BE IT RESOLVED, that this Council recommends that each of the member states urges its Congressional delegation, the appropriate members of Congress, the United States Attorney General and the Secretary of the Interior to support enactment of this Federal legislation.

Passed April 11, 1985

Eastern Lands &
Resources Council

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GEORGE DEUKMEJIAN
GOVERNOR

State of California
WASHINGTON OFFICE OF THE GOVERNOR
305 HALL OF THE STATES
444 NORTH CAPITOL STREET N.W.
WASHINGTON D.C. 20001
(202) 347 8891

September 18, 1985

The Honorable Howard L. Berman
U.S. House of Representatives
1022 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Berman:

Governor Deukmejian supports HR 2484 which would exempt states from the statute of limitations applicable to quiet title actions against the United States.

Please let me know if I can be of assistance with your efforts to move this legislation.

Sincerely,

Karen Spencer
Director

KS/gbh

cc: California Congressional Delegation
The Honorable Pete Wilson
The Honorable Alan Cranston

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
HALL OF THE STATES
444 NORTH CAPITOL STREET
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February 27, 1986

The Honorable Dan Glickman
Chairman
Subcommittee on Administrative Law and
Governmental Relations
B-351A Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Glickman:

I understand that the Administrative Law and Governmental Relations Subcommittee will hold hearings on March 5 on H.R. 2484, which would exempt states from the 12 year statute of limitations in the Federal Quiet Title Act.

I want to reiterate the strong support of this Association for legislation that would permit sovereign states to bring actions in quiet title against the United States and to obtain resolution of such actions on the merits, free from the procedural obstacles created. Attached is a copy of the policy position adopted by the state Attorneys General in December, 1983. I would appreciate your making this part of the public hearing record.

We encourage you to markup H.R. 2484 as soon as possible so that the Judiciary Committee and the full House may have the opportunity to vote on this legislation this session.

Thank you very much for your consideration of the views of the Association.

Sincerely,

C. Raymond Marvin

cc: Subcommittee Members
The Honorable Howard L. Berman
The Honorable Hank Brown
The Honorable Frederick C. Boucher
The Honorable Howard Coble
The Honorable George W. Crockett, Jr.
The Honorable Barney Frank
The Honorable Thomas N. Kindness
The Honorable Harley O. Staggers, Jr.
The Honorable Patrick L. Swindall

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Winter Meeting
Honolulu, Hawaii
December 5-9, 1983

RESOLUTION

X

LEGISLATION TO PERMIT RESOLUTION OF STATE-FEDERAL PROPERTY DISPUTES ON THE MERITS

WHEREAS, disputes between federal and state sovereigns over title to lands have caused uncertainty and impeded the orderly resolution of title disputes in the states; and

WHEREAS, it is in the interests of both states and the United States that such uncertainties be decided on their merits; and

WHEREAS, the U.S. Supreme Court held in Block v. North Dakota that the orderly resolution of title disputes between states and the federal government may be prevented by the application of the statute of limitations to the claims of sovereign states against the United States; and

WHEREAS, it is an accepted and cardinal principle of law that no statute of limitations should run against a sovereign state; and

WHEREAS, if states are precluded by the statute of limitations from asserting claims against the United States, a cloud will nevertheless remain over the disputed property, thus preventing the resolution of title and seriously impeding the process of leasing and orderly utilization of the natural resources upon such land; and

WHEREAS, such controversies should be resolved by litigation on the merits; and

WHEREAS, in June 1983, the National Association of Attorneys General requested Congress to enact legislation to permit sovereign states to bring actions in quiet title against the United States and to obtain resolution of such actions on the merits, free from the procedural obstacles created by the statute of limitations; and

WHEREAS, H.R. 3917 would achieve this result by exempting sovereign states from application of the 12-year statute of limitations in the Federal Quiet Title Act in disputes with the United States over land titles;

NOW, THEREFORE, BE IT RESOLVED, that the National Association of Attorneys General urges Congress to enact H.R. 3917; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General authorizes its General Counsel to transmit copies of this resolution to the appropriate committees of Congress, the United States Attorney General, and the Secretary of the Interior.

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99TH CONGRESS
1ST SESSION

H. R. 2484

To amend title 28, United States Code, to exempt States from the statute of limitations applicable to quiet title actions against the United States.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1985

Mr. BERMAN (for himself and Mr. BROWN of Colorado) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 28, United States Code, to exempt States from the statute of limitations applicable to quiet title actions against the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (f) of section 2409a of title 28, United States Code, is amended—

(1) by inserting ", except for an action commenced by a State," after "section";

(2) by inserting after the first sentence thereof the following: "Any civil action under this section by a State may be commenced regardless of when such action accrued."; and

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